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code of federal regulations

Wildlife and Fisheries

Item #572-C

COMPLETED

50

PART 200 TO END
Revised as of October 1, 1981

022-003-94703-5

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code of federal regulations

Wildlife and Fisheries

50

Part 200 to end

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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

October 1, 1981.

THIS TITLE

Title 50—FISH AND WILDLIFE is composed of two volumes. The first volume contains Parts 1 to 199 of the current regulations issued by the United States Fish and Wildlife Service as of October 1, 1981. The second volume, containing Part 200 to end, includes the current regulations issued by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce; International Regulatory Agencies (Fishing and Whaling), Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Deparment of Commerce); Endangered Species Committee Regulations; Marine Mammal Commission; and Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce, as of October 1, 1981.

Alphabetical listings of endangered and threatened wildlife and plants appear in Part 17.

A redesignation table for Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce appears in the Finding Aids section of this volume.

For this volume Beverly Fayson was Chief Editor assisted by Beth R. Carter. The *Code of Federal Regulations* publication program is under the editorial direction of Martha B. Girard, assisted by Robert E. Jordan.

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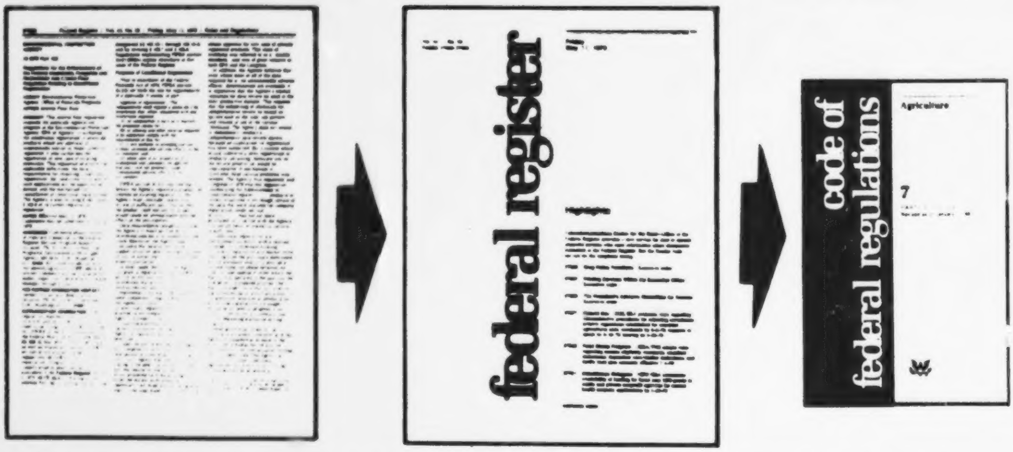

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Title 50—Wildlife and Fisheries

(This book contains Part 200 to End)

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Disposal of certain wild animals in national parks, National Park Service: 36 CFR Part 10.

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Fishing in coastal waters, lakes, rivers, bays, etc., Corps of Engineers: 33 CFR Parts 206, 209.

Fishing, hunting, trapping, and protection of wildlife in national forests and wildlife refuges, Forest Service: 36 CFR Part 241, §§ 261.8, 261.9.

Fishing, hunting, trapping, and protection of wildlife in national parks, memorials, recreation areas, etc., National Park Service: 36 CFR 2.13, 2.32, and Parts 7, 20.

Fishing and hunting in reservoir areas, Corps of Engineers: 36 CFR 327.8.

Free entry of animals, birds and products of American fisheries under specified conditions, Customs Service: 19 CFR 10.70—10.83.

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Mailing fish and game, Postal Service: 39 CFR 124.3.

Making pictures, television production, or sound tracks on areas administered by the United States Fish and Wildlife Service or the National Park Service: 43 CFR 5.1.

Migratory bird hunting stamps, Postal Service: 39 CFR 172.1.

Restricted entry of psittacine birds, Public Health Service: 42 CFR 71.161-71.166.

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PART 210—NORTH PACIFIC AREA

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§ 210.1 Definition.

(a) For the purpose of the regulations of this part the North Pacific area is defined to include all waters of the North Pacific Ocean and Bering Sea north of 48°30′ north latitude, exclusive of waters adjacent to Alaska north and west of the International Boundary at Dixon Entrance which extend 3 miles seaward (1) from the coast, (2) from lines extending from headland to headland across all bays, inlets, straits, passes, sounds, and entrances, and (3) from any island or groups of islands, including the islands of the Alexander Archipelago, and the waters between such groups of islands and the mainland.

(b) The exclusive waters adjacent to Alaska shall be those in which salmon net fishing is permitted under State of Alaska regulations. Federal salmon net fishing regulations in exclusive waters outside of State waters shall be the same as regulations promulgated by the State of Alaska for its citizens.

(Sec. 1, 68 Stat. 698 as amended; 16 U.S.C. 1021 et seq.)

[35 FR 7070, May 5, 1970]

§ 210.10 Salmon fishing prohibited, exception.

No person or fishing vessel subject to the jurisdiction of the United States shall fish for or take salmon with any net in the North Pacific area, as defined in this part: *Provided*, That this shall not apply to fishing for sockeye salmon or pink salmon south of latitude 49° north.

(Sec. 1, 68 Stat. 698 as amended; 16 U.S.C. 1021 et seq.)

[35 FR 7070, May 5, 1970]

SUBCHAPTER C—MARINE MAMMALS

PART 215—PRIBILOF ISLANDS

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AUTHORITY: Pub. L. 89-702, 80 Stat. 1091 (16 U.S.C. 1151-1187); Reorganization Plan No. 4 of 1970, 84 Stat. 2090.

SOURCE: 41 FR 49488, Nov. 9, 1976, unless otherwise noted.

Subpart A—General

§ 215.1 Purpose and scope.

The purpose of these regulations is to implement the provisions of the Fur Seal Act of 1966. The provisions of these regulations apply to the administration of the Pribilof Islands, the take of fur seals, and the procedures for issuing, amending or rescinding display permits for fur seals.

§ 215.2 Definitions.

In addition to definitions contained in the Act, and unless the context otherwise requires, in this Part 215:

(a) Act means the Fur Seal Act of 1966, 80 Stat. 1091, 16 U.S.C. 1151-1187, Pub. L. 89-702.

(b) Convention means the Interim Convention on Conservation of North Pacific Fur Seals, signed at Washington on February 9, 1957, as amended by the Protocol signed at Washington on October 8, 1963, and as extended by Agreement of September 3, 1969. T.I.A.S. 3948, 5558, 6774; 8 U.S.T. 2283; 15 U.S.T. 316; 20 U.S.T. 2992.

(c) Director means the Director of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) Fur seal means Northern fur seal scientifically known as *Callorhinusursinus.*

(e) Public display means, with respect to fur seals, display, whether or not for profit, for the purposes of education or exhibition.

§ 215.3 Penalties.

Any person who violates the provisions of Title I of the Act which relate to the protection of fur seals, or regulations thereunder as set forth in Subpart B of this part, shall be fined not more than $2000 or be imprisoned not more than one year, or both. Any person who violates or fails to comply with the regulations relating to the use and management of the Pribilof Islands or to the conservation and protection of the fur seals or wildlife or other natural resources located thereon, as set forth in Subpart C of this part, shall be fined not more than $500 or be imprisoned not more than six months, or both.

Subpart B—Public Display of Fur Seals

§ 215.11 Taking of fur seals for public display.

(a) Fur seals will be made available for public display only to holders of public display permits issued pursuant to § 215.13. All takings of fur seals will be by personnel of the National Marine Fisheries Service. The fur seals will thereafter be made available to a permit holder at a place and under such conditions as determined by the Director.

(b) A fee of $600 per animal will be charged for the services provided by the National Marine Fisheries Service in capturing, caring for and holding animals taken for public display, which shall include the fee for permit issuance. The fee is based upon a reasonable approximation of the costs involved in labor, supervision, administration, and overhead. The Director may change the amount of the fee at any time he determines that a different fee is reasonable. A change in fee may be accomplished by publication in the FEDERAL REGISTER of the new amount, without the necessity of amending these regulations.

§ 215.12 Public display permits.

(a) The Director may issue permits authorizing the possession and transportation of fur seals for public display. Any person desiring to obtain such a permit may make application to the Director. The sufficiency of the application shall be determined by the Director and, in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The information requested will be used as the basis for determining whether an application is complete and whether a public display permit should be issued. An original and two copies of the complete application shall be submitted to the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20235. Assistance in preparing the application may be obtained by writing the above address to the attention of the Marine Mammals and Endangered Species Division, or by calling the Marine Mammals and Endangered Species Division, in Washington, D.C. (a/c 202/634-7529). In preparing an application for a public display permit, provide the following information:

(1) *Title:* Application for Public Display Permit pursuant to the Fur Seal Act of 1966;

(2) List the date of the application.

(3) If the applicant is a partnership or a corporate entity, set forth the details. If the fur seal to be displayed is to be displayed by a party in addition to the applicant, set forth the name of the party and such other information as would be required if such party were an applicant.

(4) Provide a statement on the purpose of the proposed display, including a brief description of:

(i) The need for the fur seal(s),

(ii) How they will be used.

(5) Provide a description of each animal desired, including the age, sex, and size; and a list of the desired dates of delivery.

(6) Describe the manner of transportation of fur seals including:

(i) Mode of transportation;

(ii) Name of transportation company;

(iii) Length of time in transit for the transfer of the animals from the capture site to the display facility;

(iv) Length of time in transit for any future move or transfer of the animals that is planned;

(v) The qualifications of the common carrier or agent used for the transportation of the animals;

(vi) A description of the pen, container, cage, cradle, or other devices used to hold the animal before and during transportation; and

(vii) Special care before and during transportation, such as salves, antibiotics and moisture.

(7) Describe the contemplated care and maintenance of any fur seal sought, including a complete description of the the facilities where such animals will maintained or displayed, including:

(i) The dimensions of the pools or other holding facilities, and the number of animals by species to be held in each;

(ii) The water supply, amount, and quality;

(iii) The diet, amount and type for all animals;

(iv) Sanitation practices used;

(v) Qualifications and experience of the staff; and

(vi) A written certification from a licensed veterinarian knowledgeable in the field of marine mammals that he has personally reviewed the arrangements for transporting and maintaining the animal(s) and that in his opinion they are adequate to provide for the well-being of the animal(s).

(8) Provide a detailed description of the proposed display, including:

(i) A description of the manner, location and number of times per day and per week the animal(s) will be displayed;

(ii) An indication as to whether the display is for profit;

(iii) An estimate of numbers and types of people who it is estimated will benefit by such display;

(iv) A list of any educational or scientific programs connected to the contemplated display; and

(v) A description of the applicant's enterprise and its connections with any governmental, educational, medical, or other scientific entities.

(9) For the year preceding the date of this application, provide the following:

(i) A list of all marine mammals captured, transported or maintained for any purpose by or on behalf of the applicant;

(ii) The numbers of mortalities among such mammals, by species, by date and location of such mortalities;

(iii) The cause(s) of any such mortalities including when available copies of post-mortem reports; and

(iv) The steps which have been taken by the applicant to avoid or reduce such mortalities.

(10) A certification in the following language:

> I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Fur Seal Act of 1966 and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001.

(11) The applicant must sign the application.

(b) Upon receipt of an application for a public display permit, the Director shall forward the application to the Marine Mammal Commission together with a request for the recommendations of the Commission and the Committee of Scientific Advisors on Marine Mammals on the permit application. In order to comply with the time limits provided in these regulations, the Director shall request that such recommendation be submitted within 30 days of receipt of the application by the Commission. If the Commission or the Committee, as the case may be, does not respond within 30 days from the receipt of such application by the Commission, the Director shall advise the Commission in writing that failure to respond within 45 days from original receipt of the application (or such longer time as the Director may establish) shall be considered as a recommendation from the Commission and the Committee that the permit be issued. The Director may also consult with any other person, institution or agency concerning the application.

(c) Permits applied for under this section shall be issued, suspended, modified or revoked pursuant to § 215.13. In determining whether to issue a public display permit, the Director shall, among other criteria, consider whether the proposed taking will be consistent with the policies and purposes of the Act: Whether a substantial public benefit will be gained from the display contemplated, taking into account the manner of the display and the anticipated audience on the one hand, and the effect of the proposed taking and the marine ecosystem on the other; and the applicant's qualifications for the proper care and maintenance of and the adequacy of his facilities.

(d) Permits applied for under this section shall contain terms and conditions as the Director may deem appropriate, including:

(1) The methods of transportation, care and maintenance to be used with live marine mammals;

(2) Any requirements for reports or rights of inspection with respect to any activities carried out pursuant to the permit;

(3) The transferability or assignability of the permit; and

(4) The sale or other disposition of the fur seal and its progeny.

§ 215.13 Procedures for the issuance, modification, suspension or revocation of permits.

(a) Whenever a complete application for a permit is received by the Director, he shall, as soon as practicable, publish a notice thereof in the FEDERAL REGISTER. Such notice shall set forth a summary of the information contained in the application. Any interested party may, within 30 days after the date of publication of the notice, submit to the Director his written data or views with respect to the taking proposed in such application and may request a hearing in connection with the action to be taken thereon.

(b) If a request for a hearing is made within the 30-day period referred to in paragraph (a) of this section, or if the Director determines that a hearing would otherwise be advisable, the Director may, within 60 days after the date of publication of the notice referred to in paragraph (a) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the FEDERAL REGISTER not less than 15 days in advance of such hearing. Any interested person may appear in person or through representatives at the hearing and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(c) As soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section) the Director shall issue or deny issuance of the permit. Notice of the decision of the Director shall be published in the FEDERAL REGISTER within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(d) Any permit shall be subject to modification, suspension or revocation by the Director in whole or in part in accordance with these regulations and the terms of such permits. The permittee shall be given written notice by registered mail, return receipt requested, of any proposed modification, suspension, or revocation. Such notice shall specify:

(1) The action proposed to be taken and a summary of the reasons therefore;

(2) The steps, if any, which the permittee may take to demonstrate or achieve compliance with all lawful requirements;

(3) Shall advise the permittee that he is entitled to a hearing thereon, if a written request for such a hearing is received by the Director within 10 days after the date of receipt of the aforesaid notice or such other date as may be specified in the notice to the permittee. The time and place for the hearing, if requested by the permittee, shall be determined by the Director and written notice thereof given to the permittee by registered mail, return receipt requested, not less than 15 days prior to the date of the hearing. The Director may, in his discretion, allow participation at the hearing by interested members of the public. The permittee and others participating may submit all relevant material, comments and briefs at the hearing. A summary record shall be kept of the hearing.

(e) The Director shall make a determination regarding the proposed modification, suspension or revocation as soon as practicable after the close of the hearing or if no hearing is held as soon as practicable after the close of the 10-day period during which a hearing could have been requested. Notice of the Director's decision to modify, suspend or revoke shall be published in the FEDERAL REGISTER as soon as practicable.

(f) Any permittee shall have the opportunity to request modification of a permit. An application to modify a permit shall contain, to the extent relevant, the information requested in § 215.13. An application to modify a permit shall be processed in accordance with this section.

§ 215.14 Possession of permits.

(a) Any permit issued under these regulations must be in the possession of the permittee or his authorized representative who accompanies the transit of a fur seal for which the permit was issued.

(b) A duplicate copy of the permit must be physically attached to the container, package, enclosure, or other means of containment in which the fur seal is placed for the purpose of storage, transit, supervision or care.

Subpart C—Administration

§ 215.21 Visits to fur seal rookeries.

From June 1 to October 15 of each year, no person, except those authorized by a representative of the National Marine Fisheries Service, or accompanied by an authorized employee of the National Marine Fisheries Service, shall approach any fur seal rookery or hauling grounds nor pass beyond any posted sign forbidding passage.

§ 215.22 Dogs prohibited.

In order to prevent molestation of fur seal herds, the landing of any dogs at Pribilof Islands is prohibited.

§ 215.23 Importation of birds or mammals.

No mammals or birds, except household cats, canaries and parakeets, shall be imported to the Pribilof Islands without the permission of an authorized representative of the National Marine Fisheries Service.

§ 215.24 [Reserved]

§ 215.25 Walrus and Otter Islands.

By Executive Order 1044, dated February 27, 1909, Walrus and Otter Islands were set aside as bird reservations. All persons are prohibited to land on these islands except those authorized by the appropriate representative of the National Marine Fisheries Service.

§ 215.26 Local regulations.

Local regulations will be published from time to time and will be brought to the attention of local residents and persons assigned to duty on the Islands by posting in public places and brought to the attention of tourists by personal notice.

§ 215.27 Wildlife research.

(a) Wildlife research, other than research on North Pacific fur seals, including specimen collection, may be permitted on the Pribilof Islands subject to the following conditions: (1) Any person or agency, seeking to conduct such research shall first obtain any Federal or State of Alaska permit required for the type of research involved.

(2) Any person seeking to conduct such research shall obtain prior approval of the Director, Pribilof Islands Program, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 1700 Westlake Avenue North, Seattle, Wash. 98109, by filing with the Director an application which shall include:

(i) Copies of the required Federal and State of Alaska permits; and

(ii) A resume of the intended research program.

(3) All approved research shall be subject to all regulations and administrative procedures in effect on the Pribilof Islands, and such research shall not commence until approval from the Director is received.

(4) Any approved research program shall be subject to such terms and conditions as the Director, Pribilof Islands Program deems appropriate.

(5) Permission to utilize the Pribilof Islands to conduct an approved research program may be revoked by the Director, Pribilof Islands Program at any time for noncompliance with any terms and conditions, or for violations of any regulation or administrative procedure in effect on the Pribilof Islands.

[43 FR 5521, Feb. 9, 1978]

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

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Authority: Title I of the Marine Mammal Protection Act of 1972, 86 Stat. 1027 (16 U.S.C. 1361-1407), Pub. L. No. 92-522, unless otherwise noted.

Source: 39 FR 1852, Jan. 15, 1974, unless otherwise noted.

Subpart A—Introduction

§ 216.1 Purpose of regulations.

The regulations in this part implement the Marine Mammal Protection Act of 1972, 86 Stat. 1027, 16 U.S.C. 1361-1407, Pub. L. 92-522, which, among other things, restricts the taking, possession, transportation, selling, offering for sale, and importing of marine mammals.

§ 216.2 Scope of regulations.

This Part 216 applies solely to marine mammals and marine mammal products as defined in § 216.3. For regulations under the Act, with respect to other marine mammals and marine mammal products, see 50 CFR Part 18.

§ 216.3 Definitions.

In addition to definitions contained in the Act, and unless the context otherwise requires, in this Part 216:

"Act" means the Marine Mammal Protection Act of 1972, 86 Stat. 1027, 16 U.S.C. 1361-1407, Pub. L. 92-522.

"Alaskan Native" means a person defined in the Alaska Native Claims Settlement Act (43 U.S.C. sec. 1602(b)) (85 Stat. 588) as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimishian Indians enrolled or not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or group, of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native group. Any such citizen enrolled by the Secretary of the Interior pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part.

"Authentic native articles of handicrafts and clothing" means items made by an Indian, Aleut or Eskimo which (a) were commonly produced on or before December 21, 1972, and (b) are composed wholly or in some significant respect of natural materials, and (c) are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to § 216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

"Commercial fishing operation" means the lawful harvesting of fish from the marine environment for profit as part of an on-going business enterprise. Such term shall not include sport fishing activities whether or not carried out by charter boat or otherwise, and whether or not the fish so caught are subsequently sold.

"Endangered Species" means a species or subspecies of marine mammal listed as "endangered" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205 (see Part 17 of this title).

"Incidental catch" means the taking of a marine mammal (1) because it is directly interfering with commercial fishing operations, or (2) as a consequence of the steps used to secure the fish in connection with commercial fishing operations: *Provided*, That a marine mammal so taken must immediately be returned to the sea with a minimum of injury and further, that the taking of a marine mammal, which otherwise meets the requirements of this definition shall not be considered an incidental catch of that mammal if it is used subsequently to assist in commercial fishing operations.

"Marine environment" means the oceans and the seas, including estuarine and brackish waters.

"Marine mammal" means those specimens of the following orders, which are morphologically adapted to the marine environment, whether alive or dead, and any part thereof, including but not limited to, any raw, dressed or dyed fur or skin: Cetacea (whales and porpoises), Pinnipedia, other than walrus (seals and sea lions).

"Native village or town" means any community, association, tribe, band, clan or group.

"Optimum sustainable population" is a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

"Pregnant" means pregnant near term.

"Secretary" shall mean the Secretary of Commerce or his authorized representative.

"Subsistence" means the use of marine mammals taken by Alaskan Natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence.

"Take" means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill, any marine mammal, including, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional acts which result in the disturbing or molesting of a marine mammal.

"Threatened species" means a species of marine mammal listed as "threatened" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205.

"Wasteful manner" means any taking or method of taking which is likely to result in the killing of marine mammals beyond those needed for subsistence or for the making of authentic native articles of handicrafts and clothing or which results in the waste of a substantial portion of the marine mammal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal.

[39 FR 1852, Jan. 15, 1974, as amended at 41 FR 55536, Dec. 21, 1976]

§ 216.4 Other laws and regulations.

(a) *Federal.* Nothing in this part, nor any permit issued under authority of this part, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of the United States, including any applicable statutes or regulations relating to wildlife and fisheries, health, quarantine, agriculture, or customs.

(b) *State laws or regulations.* See Subpart H of this part.

(1) Purport to authorize a State to issue permits in situations which would require a Federal permit under the Act unless and until appropriate Federal regulations have been issued under section 103 of the Act, and where appropriate, the Secretary has waived the moratorium on such taking or importation under section 101(a)(3) of the Act; or

(2) Purport to authorize a State to issue permits for scientific research or for public display (except that a State may, under authority of a general scientific research permit granted by the Secretary to it, assign individual scientific research permits to State employees or representatives of State universities or other State agencies, subject to the provisions of the general permit); or

(3) Purport to authorize the State to grant exemptions from the Act on the grounds of economic hardship.

(c) Any State may obtain a review and determination of its existing laws and regulations from the Secretary by submitting a written request to that effect to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, accompanied by the following documents, unless otherwise specified by the Secretary:

(1) A complete set of laws and regulations to be reviewed, certified as complete, true and correct, by the appropriate State official;

(2) A scientific description by species and population stock of the marine

mammals to be subjected to such laws and regulations;

(3) A description of the organization staffing and funding for the administration and enforcement of the laws and regulations to be reviewed;

(4) A description where such laws and regulations provide for discretionary authority on the part of State officials to issue permits, of the procedures to be used in granting or withholding such permits and otherwise enforcing such laws; and

(5) Such other materials and information as the Secretary may request or which the State may deem necessary or advisable to demonstrate the compatibility of such laws and regulations with the policy and purposes of the Act and the rules and regulations issued thereunder.

(d) In making a determination with respect to any State laws and regulations, the Secretary shall take into account:

(1) Whether such laws and regulations are consistent with the purposes and policies of the Act and the rules and regulations issued thereunder;

(2) The extent to which such laws and regulations are consistent with, or constitute an integrated management or protection program with, the laws and regulations of other jurisdictions whose activities may affect the same species or stocks or marine mammals; and

(3) The existence of or preparations for an overall State program regarding the protection and management of marine mammals to which the laws and regulations under review relate.

(e) To assist States in preparing laws and regulations relating to marine mammals, the Secretary will also, at the written request of any State, make a preliminary review of any such proposed laws or regulations. Such review will be strictly advisory in nature and shall not be binding upon the Secretary. Upon adoption of previously reviewed laws and regulations, the same shall be subject to a complete review for a final determination pursuant to these regulations. To be considered for preliminary review, all legislative and regulatory proposals must be forwarded to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, and certified by the appropriate State official. In addition, they shall be accompanied to the extent available with the same materials required under paragraph (b) above, unless otherwise provided by the Secretary.

(f) All determinations by the Secretary (other than as a result of preliminary reviews of proposed laws and regulations) shall be final and binding on the parties.

(g) The implementation and enforcement of all State laws and regulations previously approved by the Secretary pursuant to this section shall be subject to continuous monitoring and review by the Secretary pursuant to such rules and regulations as he may adopt. Any modifications, amendments, deletions or additions to laws or regulations previously approved shall be deemed to be new laws and regulations for the purposes of these regulations and shall require review and approval by the Secretary before their adoption.

(h) Notwithstanding the foregoing, nothing herein shall prevent (1) the taking of a marine mammal by a State or local government official pursuant to § 216.22 of the regulations in this part, or (2) the adoption or enforcement of any law or regulation relating to any marine mammal taken or imported prior to the effective date of the Act.

[39 FR 1852, Jan. 15, 1974, as amended at 41 FR 36662, Aug. 31, 1976]

Subpart B—Prohibitions

§ 216.11 Prohibited taking.

Except as otherwise provided in Subparts C, D, and I of this Part 216, it is unlawful for:

(a) Any person, vessel, or conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas, or

(b) Any person, vessel, or conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States, or

(c) Any person subject to the jurisdiction of the United States to take any marine mammal during the moratorium.

[39 FR 1852, Jan. 15, 1974, as amended at 41 FR 36662, Aug. 31, 1976]

§ 216.12 Prohibited importation.

(a) Except as otherwise provided in Subparts C and D of this Part 216, it is unlawful for any person to import any marine mammal or marine mammal product into the United States.

(b) Regardless of whether an importation is otherwise authorized pursuant to Subparts C and D of this Part 216, it is unlawful for any person to import into the United States any:

(1) Marine mammal:

(i) Taken in violation of the Act, or

(ii) Taken in another country in violation to the laws of that country;

(2) Any marine mammal product if

(i) The importation into the United States of the marine mammal from which such product is made would be unlawful under paragraph (b)(1) of this section, or

(ii) The sale in commerce of such product in the country of origin if the product is illegal.

(c) Except in accordance with an exception referred to in Subpart C and §§ 216.31 (regarding scientific research permits only) and 216.32 of this Part 216, it is unlawful to import into the United States any:

(1) Marine mammal which was pregnant at the time of taking.

(2) Marine mammal which was nursing at the time of taking, or less than 8 months old, whichever occurs later.

(3) Specimen of an endangered or threatened species of marine mammal.

(4) Specimen taken from a depleted species or stock of marine mammals, or

(5) Marine mammal taken in an inhumane manner.

(d) It is unlawful to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner proscribed by the Secretary of Commerce for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

§ 216.13 Prohibited uses, possession, transportation, and sales.

It is unlawful for:

(a) Any person to use any port, harbor or other place under the jurisdiction of the United States for any purpose in any way connected with a prohibited taking or an unlawful importation of any marine mammal or marine mammal product; or

(b) Any person subject to the jurisdiction of the United States to possess any marine mammal taken in violation of the Act or these regulations, or to transport, sell, or offer for sale any such marine mammal or any marine mammal product made from any such mammal.

(c) Any person subject to the jurisdiction of the United States to use in a commercial fishery, any means or method of fishing in contravention of regulations and limitations issued by the Secretary of Commerce for that fishery to achieve the purposes of this Act.

§ 216.14 Marine mammals taken before the Act.

(a) Section 102(e) of the Act provides, in effect, that the Act shall not apply to any marine mammal taken prior to December 21, 1972, or to any marine mammal product, consisting of or composed in whole or in part of, any marine mammal taken before that date. This prior status of any marine mammal or marine mammal product may be established by submitting to the Director, National Marine Fisheries Service prior to, or at the time of importation, an affidavit containing the following:

(1) The Affiant's name and address;

(2) Identification of the Affiant;

(3) A description of the marine mammals or marine mammal products which the Affiant desires to import;

(4) A statement by the Affiant that, to the best of his knowledge and belief, the marine mammals involved in the application were taken prior to December 21, 1972;

(5) A statement by the Affiant in the following language:

> The foregoing is principally based on the attached exhibits which, to the best of my knowledge and belief, are complete, true and correct. I understand that this affidavit is being submitted for the purpose of inducing the Federal Government to permit the importation of—under the Marine Mammal

Protection Act of 1972 (16 U.S.C. 1361-1407) and regulations promulgated thereunder, and that any false statements may subject me to the criminal penalties of 13 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(b) Either one of two exhibits shall be attached to such affidavit, and will contain either:

(1) Records or other available evidence showing that the product consists of or is composed in whole or in part of marine mammals taken prior to the effective date of the Act. Such records or other evidentiary material must include information on how, when, where, and by whom the animals were taken, what processing has taken place since taking, and the date and location of such processing; or

(2) A statement from a government agency of the country of origin exercising jurisdiction over marine mammals that any and all such mammals from which the products sought to be imported were derived were taken prior to December 21, 1972.

(c) No pre-Act marine mammal or pre-Act marine mammal product may be imported unless the requirements of this section have been fulfilled.

(d) This section has no application to any marine mammal or marine mammal product intended to be imported pursuant to §§ 216.21, 216.31 or § 216.32.

§ 216.15 Depleted species.

The following listed species have been designated by the Director as depleted pursuant to the provisions of the Act.

(a) Hawaiian monk seal (*Monachus schauinslandi*).

(b) Bowhead whale (*Balaena mysticetus*).

[41 FR 30120, July 22, 1976, as amended at 42 FR 60150, Nov. 25, 1977]

Subpart C—General Exceptions

§ 216.21 Actions permitted by international treaty, convention, or agreement.

The Act and these regulations shall not apply to the extent that they are inconsistent with the provisions of any international treaty, convention or agreement, or any statute implementing the same relating to the taking or importation of marine mammals or marine mammal products, which was existing and in force prior to December 21, 1972, and to which the United States was a party. Specifically, the regulations in Subpart B of this part and the provisions of the Act shall not apply to activities carried out pursuant to the Interim Convention on the Conservation of North Pacific Fur Seals signed at Washington on February 9, 1957, and the Fur Seal Act of 1966, 16 U.S.C. 1151-1187, as in each case, from time to time amended.

§ 216.22 Taking by State or local government officials.

(a) A State or local government official or employee may take a marine mammal in the normal course of his duties as an official or employee, and no permit shall be required, if such taking:

(1) Is accomplished in a humane manner;

(2) Is for the protection or welfare of such mammal or for the protection of the public health or welfare; and

(3) Includes steps designed to insure return of such mammal, if not killed in the course of such taking, to its natural habitat. In addition, any such official or employee may, incidental to such taking, possess and transport, but not sell or offer for sale, such mammal and use any port, harbor, or other place under the jurisdiction of the United States. All steps reasonably practicable under the circumstances shall be taken by any such employee or official to prevent injury or death to the marine mammal as the result of such taking. Where the marine mammal in question is injured or sick, it shall be permissible to place it in temporary captivity until such time as it is able to be returned to its natural habitat. It shall be permissible to dispose of a carcass of a marine mammal taken in accordance with this subsection whether the animal is dead at the time of taking or dies subsequent thereto.

(b) Each taking permitted under this Section shall be included in a written report to be submitted to the Secretary every six months beginning December 31, 1973. Unless otherwise permitted by the Secretary, the report shall contain a description of:

(1) The animal involved;

(2) The circumstances requiring the taking;

(3) The method of taking;

(4) The name and official position of the State official or employee involved;

(5) The disposition of the animal, including in cases where the animal has been retained in captivity, a description of the place and means of confinement and the measures taken for its maintenance and care; and

(6) Such other information as the Secretary may require.

§ 216.23 Native exceptions.

(a) *Taking.* Notwithstanding the prohibitions of Subpart B of this Part 216, but subject to the restrictions contained in this section, any Indian, Aleut, or Eskimo who resides on the coast of the North Pacific Ocean or the Arctic Ocean may take any marine mammal without a permit, if such taking is:

(1) By Alaskan Natives who reside in Alaska for subsistence, or

(2) For purposes of creating and selling authentic native articles of handicraft and clothing, and

(3) In each case, not accomplished in a wasteful manner.

(b) *Restrictions.* (1) No marine mammal taken for subsistence may be sold or otherwise transferred to any person other than an Alaskan Native or delivered, carried, transported, or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Alaskan Native directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Alaskan Native; or

(ii) It is sold or transferred to a registered agent in Alaska for resale or transfer to an Alaskan Native; or

(iii) It is an edible portion and it is sold in an Alaskan Native village or town.

(2) No marine mammal taken for purposes of creating and selling authentic native articles of handicraft and clothing may be sold or otherwise transferred to any person other than an Indian, Aleut or Eskimo, or delivered, carried, transported or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Indian, Aleut or Eskimo directly or through a registered agent to a tannery registered under subsection (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Indian, Aleut or Eskimo; or

(ii) It is sold or transferred to a registered agent for resale or transfer to an Indian, Aleut, or Eskimo; or

(iii) It has first been transformed into an authentic native article of handicraft or clothing; or

(iv) It is an edible portion and sold (A) in an Alaskan Native village or town, or (B) to an Alaskan Native for his consumption.

(c) Any tannery, or person who wishes to act as an agent, within the jurisdiction of the United States may apply to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, for registration as a tannery or an agent which may possess and process marine mammal products for Indians, Aleuts, or Eskimos. The application shall include the following information:

(i) The name and address of the applicant;

(ii) A description of the applicant's procedures for receiving, storing, processing, and shipping materials;

(iii) A proposal for a system of bookkeeping and/or inventory segregation by which the applicant could maintain accurate records of marine mammals received from Indians, Aleuts, or Eskimos pursuant to this section;

(iv) Such other information as the Secretary may request;

(v) A certification in the following language:

> I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefit of an exception under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and regulations promulgated thereunder,

and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(vi) The signature of the applicant.

The sufficiency of the application shall be determined by the Secretary, and in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The registration of a tannery or other agent shall be subject to such conditions as the Secretary prescribes, which may include, but are not limited to, provisions regarding records, inventory segregation, reports, and inspection. The Secretary may charge a reasonable fee for processing such applications, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

(d) Notwithstanding the preceding provisions of this section, whenever, under the Act, the Secretary determines any species of stock of marine mammals to be depleted, he may prescribe regulations pursuant to section 103 of the Act upon the taking of such marine animals by any Indian, Aleut, or Eskimo and, after promulgation of such regulations, all takings of such marine mammals shall conform to such regulations.

§ 216.24 Taking and related acts incidental to commercial fishing operations.

(a)(1) No marine mammals may be taken in the course of a commercial fishing operation unless: The taking constitutes an incidential catch as defined in § 216.3, a general permit and certificate(s) of inclusion have been obtained in accordance with these regulations and such taking is not in violation of such permit, certificate(s), and regulations.

(2) A vessel engaged in commercial fishing operation involving the utilization of purse seines to capture yellowfin tuna and which does not operate under a general permit and certificates of inclusion shall not carry more than two speedboats.

(b) *General permits*—(1) General permits to allow the taking of marine mammals, except those for which taking is prohibited under the Endangered Species Act of 1973, in connection with commercial fishing operations will be issued to persons using fishing gear in any one of the following categories:

(i) *Category 1: Towed Or dragged gear.* Commercial fishing operations utilizing towed or dragged gear such as bottom otter trawls, bottom pair trawls, multi-rig trawls, and dredging gear.

(ii) *Category 2: Encircling gear, pursue seining involving the intentional taking of marine mammals.* Commercial fishing operations utilizing purse seines to capture tuna by international encircling marine mammals. Only vessels that meet the fishing gear and equipment requirements contained in § 216.24(d)(2)(iv) of these regulations may be included in this category.

(iii) *Category 3: Encircling gear, pursue seining not involving the international taking of marine mammals.* Commercial fishing operations utilizing pursue seining, which do not intentionally encircle marine mammals.

(iv) *Category 4: Stationary gear.* Commercial fishing operations utilizing stationary gear such as traps, pots, weirs, and pound nets; and

(v) *Category 5: Other gear.* Commercial fishing operations utilizing trolling, gill nets, hooks and line gear, and any gear not classified under paragraph (b)(1)(i), (b)(1)(ii), (b)(1)(iii), or (b)(1)(iv) of this section.

(2) Permits shall be issued as general permits to a class of fishermen using one of the general categories of gear set out above. Any member of such class may apply for a general permit on behalf of any members of the class. Subsequent to the granting of general permit, vessel owners, managing owners, or operators (as required) may make application to be included under the terms of a general permit by obtaining a certificate of inclusion. Applications for a general, permit shall contain:

(i) Name, address, and telephone number of the applicant. If the applicant is an organization or corporate entity, a copy of the corporate or organizational charter which sets forth the basis for application on behalf of a group of class of commercial fishermen must be included;

(ii) A description of permit for which application is being made;

(iii) A description of the fishing operations by which marine mammals are taken; and a statement explaining why the applicant cannot avoid taking marine mammals incidentally to commercial fishing operations;

(iv) The date when the general permit is requested to become effective;

(v) A list of the fish sought by persons requesting certificates under the general permit and the general areas of operations of their vessels.

(vi) A statement identifying the marine mammals and numbers of marine mammals which are expected to be taken under the general permit;

(vii) A statement by the applicant demonstrating that the requested taking of marine mammal species or stocks during commercial fishing operations is consistent with the purposes of the Act, and the applicable regulations established under sec. 103 of the Act.

(viii) A description of the procedures and techniques that will be utilized in order that takings under the permit will be consistent with the purposes and policies of the Act and these regulations; and

(ix) A certification, signed by the applicant, in the following language: I certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a general permit under the Marine Mammal Protection Act of 1972 and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or the penalties provided under the Marine Mammal Protection Act of 1972.

(3) The original and four copies of the application for general permit shall be submitted to the Assistant Administrator for Fisheries (hereinafter, the Assistant Administrator), National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235. Applications should be received not less than 180 days prior to the date upon which the permit is to become effective. Assistance may be obtained by writing the Assistant Administrator or by calling the Office of Marine Mammals and Endangered Species, telephone number 202-634-7461.

(4) A general permit shall be valid for the time period indicated on the face of the permit. General permits shall be subject to modification, suspension or revocation and may contain terms and conditions prescribed in accordance with sec. 104(b) (2) of the Act, 16 U.S.C. 1374(b)(2).

(5) The Assistant Administrator shall determine the adequacy and completeness of an application, and if found to be adequate and complete will promptly publish a notice of receipt of such application in the FEDERAL REGISTER. Interested parties will have thirty days from the date of publication in which to submit written comments with respect to the granting of such permit.

(6) If within thirty days after the date of publication of the FEDERAL REGISTER notice concerning receipt of an application for a general permit, any interested party or parties request a hearing on the application, the Assistant Administrator may within sixty days following the date of publication of the FEDERAL REGISTER notice afford such party or parties an opportunity for such a hearing. Any hearing held in connection with an application for a general permit shall be conducted in the same manner as hearings convened in connection with a scientific research or a public display permit application under § 216.33.

(7) There is no fee for filing an application for a general permit.

(c) *Certificates of inclusion*—(1) *Vessel certificates of inclusion.* The owner or managing owner of a vessel that participates in commercial fishing operations for which a general permit is required under this subpart shall be the holder of a valid vessel certificate of inclusion under that general permit. Such certificates shall not be transferable and shall be renewed annually. Provided five (5) days advance written notice is given, a vessel certificate holder may surrender his certificate to the Regional Office from which the certificate was issued. However, once surrendered the certificate shall not be returned nor shall a new certificate be issued before the end of the calendar year. This provision shall not apply when a change of vessel ownership occurs.

(2) *Operator's certificate of inclusion.* The person in charge of and actually conducting fishing operations (hereinafter referred to as the operator) on any vessel engaged in commercial fishing operations for which a Category 2 general permit is required under this subpart, shall be the holder of a valid operator's certificate of inclusion. These certificates are not transferable and will be valid only on any purse seine vessel having a valid vessel certificate of inclusion for Category 2. In order to receive a certificate of inclusion, the operator shall have satisfactorily completed required training. An operator's certificate of inclusion shall be renewed annually.

(3) A vessel certificate issued pursuant to paragraph (c)(1) of this section shall be aboard the vessel while it is engaged in fishing operations and the operator's certificate issued pursuant to paragraph (c)(2) of this section shall be in the possession of the operator to whom it was issued. Certificates shall be shown upon request to an enforcement agent or other designated agent of the National Marine Fisheries Service. However, vessels and operators at sea on a fishing trip on the expiration date of their certificate of inclusion, to whom or to which a certificate of inclusion for the next year has been issued, may take marine mammals under the terms of the new certificate.

The vessel owners or operators are obligated to obtain physically or to place the new certificate aboard, as appropriate, when the vessel next returns to port.

(4) Application(s) for certificates of inclusion under paragraph (c)(1) of this section should be addressed as follows:

(i) Category 1, 3, 4, and 5 applications:

(A) Owners or managing owners of vessels registered in Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, should make application to the Regional Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue, Seattle, Washington 98102.

(B) Owners or managing owners of vessels registered in Arizona, California, Hawaii, Nevada, and the territories of American Samoa, Guam, and the Trust Territory of the Pacific Islands should make application to the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

(C) Owners or managing owners of vessels registered in Alaska should make application to the Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

(D) Owners or managing owners of vessels registered in Connecticut, Delaware, District of Columbia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin should make application to the Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

(E) Owners or managing owners of vessels registered in Alabama, Arkansas, Florida, Georgia, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, and Virgin Islands, should make application to the Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Gandy Boulevard North, Duval Building, St. Petersburg, Florida 33702.

(ii) Category 2 applications: Owners or managing owners of purse seine vessels in this category shall make application to the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101.

(5) Applications for vessel certificates of inclusion under paragraph (c)(1) of this section shall contain:

(i) The name of the vessel which is to appear on the certificate(s) of inclusion;

(ii) The category of the general permit under which the applicant wishes to be included;

(iii) The species of fish sought and general area of operations;

(iv) The identity of State and local commercial fishing licenses, if applicable, under which vessel operations are conducted, and dates of expiration;

(v) The name of the operator and date of training, if applicable; and

(vi) The name and signature of the applicant, whether owner or managing owner, address, and if applicable, the organization acting on behalf of the vessel.

(6) *Fees.* (i) Applications for certificates of inclusion under paragraph (c)(1) of this section shall contain a payment for each vessel named in the application in accordance with the following schedule:

(A) Categories 1: Towed or dragged gear; 3: Encircling gear, purse seining not involving the intentional taking of marine mammals; 4: Stationary gear; and 5: Other gear—$10.00.

(B) Category 2: Encircling gear, purse seining involving the intentional taking of marine mammals—$200.00.

(ii) Except as provided herein, vessel owners or managing owners desiring a vessel certificate of inclusion under more than one category of the general permit will not be required to pay a full fee for each certificate. After the initial fee for a certificate is paid for each vessel, additional certificates will be issued for a fee of $.50 (fifty cents) each. However, every application for a vessel certificate under Category 2 shall contain the full fee.

(iii) Notwithstanding the provisions of paragraph (c)(6)(i) of this section, an applicant whose income is below Federal poverty guidelines may, upon showing in his application that his income is below such guidelines, be issued a certificate under the following schedule of fee payment:

(A) Categories—1: Towed or dragged gear; 3: Encircling gear, purse seining not involving the intentional taking of marine mammals; 4: Stationary gear; and 5: Other gear—$1.00.

(B) Category 2: Encircling gear, purse seining involving the intentional taking of marine mammals—$20.00.

(iv) A fee is not required for an operator's certificate of inclusion.

(v) The Assistant Administrator may change the amount of these required fees at any time he determines a different payment to be reasonable, and said change shall be accomplished by publication in the FEDERAL REGISTER of the new fee schedule.

(7) The Regional Office receiving applications for certificates of inclusion from vessel owners, managing owners, or operators shall determine the adequacy and completeness of such applications, and upon its determination that such applications are adequate and complete, it shall approve such applications and issue the certificate(s).

(d) Terms and conditions of certificates under general permits shall include, but are not limited to the following:

(1) *Towed or dragged gear.*—(i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage, or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(1)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus,* under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to fully report and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(1)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director to whom the certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity, but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence then it shall be reported within 48 hours after arrival in any port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(vi) Failure to comply with provisions of the general permit or certificate of inclusion including, but not limited to, failure to submit the vessel, including required marine mammals logs and gear, to an inspection upon demand by an authorized Federal enforcement agent, or failure to adhere to the provisions of these regulations will subject the certificate holder to a revocation of his certificate and also subject the certificate holder, vessel, or master to the penalties provided for under the act.

(2) *Encircling gear, purse seining involving the intentional taking of marine mammals*—(i) *Quotas:*

(A) A certificated vessel may take marine mammals so long as the taking is an incidental occurrence in the course of normal commercial tuna purse seine fishing operations, and the fishing operations are under the immediate direction of a person who is the holder of a valid operator's certificate of inclusion; except that a vessel shall not encircle either:

(*1*) Pure schools of the coastal spotted dolphin (*Stenella attenuata*) stock, the Costa Rican spinner, and the eastern spinner dolphin (*Stenella longirostris*) stocks, or mixed schools including these stocks;

(*2*) Pure schools of any species of dolphin except the offshore spotted dolphin (*Stenella attenuata*) stock, the striped dolphin (*Stenella coeruleoalba*) species, and the common dolphin (*Dephinus delphis*) species; or

(*3*) Any other species or stock of marine mammals that do not have an allowable take as listed below or whose allowable take has been exceeded. The numbers of marine mammals that may be taken during each of the calendar years 1981-1985 by U.S. vessels in the course of commercial fishing operations will be limited as follows:

QUOTAS FOR EACH CALENDAR YEAR, 1981-85

Species/stock management unit	Take	Encirclement	Mortality [1]
Spotted dolphin (northern offshore) [2]	16,570,000	10,338,000	20,500
Spotted dolphin (southern offshore)	4,605,000	2,873,000	5,697
Spinner dolphin (northern whitebelly)	1,205,000	699,000	5,321
Spinner dolphin (southern whitebelly) [3]	568,000	329,000	2,506
Common dolphin (northern tropical) [4]	723,000	450,000	1,890
Common dolphin (central tropical)	2,619,000	845,000	8,112
Common dolphin (southern tropical)	1,306,000	421,000	4,045

QUOTAS FOR EACH CALENDAR YEAR, 1981–85—Continued

Species/stock management unit	Take	Encirclement	Mortality [1]
Striped dolphin (northern tropical)	28,000	21,000	429
Striped dolphin (central tropical)	118,000	89,000	1,822
Striped dolphin (southern tropical)	265,000	199,000	4,095

[1] The U.S. allowable mortality in any of the years 1981–85 shall not exceed 20,500.

[2] Fifty percent of replacement yield for the northern offshore spotted dolphin is 42,898; however, the maximum allowable mortality in any year is 20,500.

[3] Includes allowance for mixed species take.

[4] Includes Baja neritic dolphin stock.

(B) The incidental mortality of marine mammals permitted under the general permit for each category will be monitored according to the methodology published in the FEDERAL REGISTER. The Assistant Administrator shall determine on the basis of the evidence available to him the date upon which the allowable quotas will be reached or exceeded. Notice of the Assistant Administrator's determination shall be published in the FEDERAL REGISTER not less than seven days prior to the effective date.

(C) If at the time the net skiff attached to the net is released from the vessel at the start of a set, and species or stocks that are prohibited from being taken are not reasonably observable, the fact that individuals of that species or stock are subsequently taken will not be cause for issuance of a notice of violation provided that all procedures required by the applicable regulations have been followed.

(D) The general permit will be valid for a period not to exceed five years. The Assistant Administrator may, upon receipt of new information which in his opinion is sufficient to require modification of the general permit or regulations, propose to modify such after consultation with the Marine Mammal Commission. These modifications shall be consistent with and necessary to carry out the purposes of the Act. Any modifications proposed by the Assistant Administrator involving changes in the quotas shall include the statements required by section 103(d) of the Act. Modifications shall be proposed in the FEDERAL REGISTER and a public comment period shall be allowed. At the request of any interested person within 15 days after publication of the proposed modification in the FEDERAL REGISTER, the Assistant Administrator may hold a public hearing to receive and evaluate evidence in those circumstances where he has determined it to be consistent with and necessary to carry out the purposes of the Act. Such request may be for a formal hearing on the record before an Administrative Law Judge. Within 10 days after receipt of the request for a public hearing, the Assistant Administrator shall provide the requesting party or parties with his decision. If a request is denied the Assistant Administrator shall state the reasons for the denial. Within 10 days after receipt of a decision denying a request for a formal hearing, the requesting person may file a written notice of appeal with the Administrator. Based upon the evidence presented in the notice, the Administrator shall render a decision within 20 days from receipt of the notice.

(ii) *General Conditions:* (A) Marine mammals incidentally taken shall be immediately returned to the environment where captured without further injury. In addition to the specific porpoise rescue requirements established in § 216.24(d)(2), the operators of purse seine vessels shall take every possible precaution to refrain from causing or permitting incidental mortality and serious injury of marine mammals. Operators shall not set on marine mammals when conditions of wind, sea state, visibility, or the number of marine mammals and/or fish prevent the effective use of backdown and other required porpoise rescue procedures.

(B) Operators may take such steps as are necessary to protect their gear or person from damage or threat of personal injury. However, all marine mammals taken in the course of commercial fishing operations shall be subject to the definition of "incidental catch" in § 216.3 of this part and may not be retained except where a specific permit has been obtained authorizing the retention.

(C) Operators of all certificated vessels shall maintain daily marine mammal logs provided by the Regional Director, Southwest Region, National Marine Fisheries Service. Such logs shall be subject to inspection at the discretion of the Southwest Regional Director, or his designated personnel. Certified copies of completed marine mammal logs shall be mailed or delivered at the conclusion of each fishing voyage to the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, within 48 hours after arrival in any port. If no sets involving marine mammals were made during a voyage, a marine mammal log stating such shall be submitted.

(D) The vessel certificate holder shall notify the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, telephone 714-293-6540, of any change of vessel operator within at least 48 hours prior to departing on the next scheduled trip.

(iii) *Reporting Requirements:* In accordance with § 216.24(f) of these regulations, the following specific reporting procedures shall be required:

(A) The vessel certificate holder of each certificated vessel, who has been notified via certified letter from the National Marine Fisheries Service that his vessel is required to carry an observer, shall notify the field office, Southwest Region, National Marine Fisheries Service, San Diego, California, telephone 714-293-6540 at least five (5) days in advance of the vessel's departure on a fishing voyage to allow for observer placement. After a fishing voyage is initiated, the vessel is obligated to carry an observer until the vessel returns to port and one of the following conditions is met: (*1*) Unloads more than 400 tons of any species of tuna; or (*2*) unloads any amount of any species of tuna equivalent to one half of the vessel's carrying capacity; or (*3*) unloads its tuna catch after 40 days or more at sea from the date of departure. Further, the Regional Director, Southwest Region, may consider special circumstances for exemptions to this definition, provided written requests clearly describing the circumstances are received at leat ten (10) days prior to the termination or the initiation of a fishing voyage. A response to the written request will be made by the Regional Director within five (5) days after receipt of the request. A vessel whose vessel certificate holder has failed to comply with the provisions of this section may not engage in fishing operations for which a general permit is required.

(B) Masters of all certificated vessels carrying National Marine Fisheries Service observers shall allow observers to report, in coded form, information by radio concerning the accumulated take of marine mammals and other observer collected data at such times as specified by the Regional Director, Southwest Region. Individual vessel names and coded information reported by radio by the National Marine Fisheries Service observers shall remain confidential unless their release is authorized in writing by the operator of the vessel.

(C) The vessel certificate holder of each certificated vessel without an observer onboard, and fishing inside the Inter-American Tropical Tuna Commission's Yellowfin Regulatory Area is required to report within 48 hours prior to departure from port and within 48 hours after arrival in port, of the vessel's actual departure or arrival date, including any changes in schedules that may occur after the original notification. The report shall include the name of the vessel and the location of the port of the scheduled departure or arrival, and shall be telephoned to 714-233-5511, the Southwest Regional Office's 24-hour answering service.

(D) The Regional Director, Southwest Region, will provide to the public, periodic quota status reports summarizing the estimated incidental porpoise mortality by U.S. vessels of individual species and stock.

(iv) *Vessel gear and equipment requirements:* A vessel certificate issued pursuant to paragraph (c)(i) of this section will be valid only for a vessel equipped with a porpoise safety panel in its purse seine, and which uses the other gear, equipment, and procedures described herein. The vessel certificate holder shall be held responsible for providing and maintaining, in a functional and seaworthy condition, the required porpoise safety panels and all other required gear and equipment used in the course of catching and landing tuna. The requirement for the porpoise safety panel and other gear and equipment are as follows:

(A) Porpoise safety panel—Class I and II vessels: For Class I purse seiners (400 short tons carrying capacity or less) and for Class II purse seiners (greater than 400 short tons carrying capacity, built before 1961), the porpoise safety panel shall be a minimum of 100 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 10 strips shall be determined at a ratio of 10 fathoms in length for each strip that the net is deep. It shall be installed beginning 75 to 100 fathoms from the bow ortza, and shall extend toward the stern of the net protecting the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel shall consist of small mesh webbing not to exceed 1¼" stretch mesh, extending from the corkline downward to a minimum depth equivalent to one strip of 100 meshes of 4¼" stretch mesh webbing.

(B) Porpoise safety panel—Class III vessels: For Class III purse seiners (greater than 400 short tons carrying capacity, built after 1960), the porpoise safety panel shall be a minimum of 180 fathoms in length (as measured before installation). It shall be installed beginning 60 to 100 fathoms from the bow ortza and shall extend toward the stern of the net protecting the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel shall consist of small mesh webbing not to exceed 1¼" stretch mesh extending downward from the corkline and the base of the porpoise apron to a minimum depth equivalent to two strips of 100 meshes of 4¼" stretch mesh webbing.

(C) Porpoise apron: Each Class III vessel shall have installed in its purse seine net, a triangular-shaped porpoise apron consisteing of small mesh not to exceed 1¼" stretch mesh, 85 to 95 fathoms in length, laced between the corkline and the porpoise safety panel. The bow end of the porpoise apron shall begin approximately 10 to 15 fathoms (depending on the depth of the net) outboard of the end of the third bunchline and extend toward the stern of the net such that the peak of the porpoise apron triangle shall coincide with the apex of the backdown channel in the net. The base of the porpoise apron shall be laced to the upper edge of the porpoise safety panel. The upper edges of the porpoise apron shall be tapered at a 5 mesh, 2 bar rate from each end such that the tapers intersect at the center of the porpoise apron. The depth of the porpoise apron at its center shall be 443 to 463 meshes.

(D) Porpoise apron approval: The porpoise apron shall be installed under the supervision of a National Marine Fisheries Service designated representative: A trial set(s) shall be conducted under supervision of a National Marine Fisheries Service designated representative after installation of the porpoise apron to insure proper installation and operation of the apron. During the trial set(s), the stern tiedown point and outboard bow bunchline mark shall be determined and permanently marked so as to be clearly visible from the vessel. Each time a super apron is reinstalled after removal from a net or the net depth is altered, the vessel and gear shall be made available for reinspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region, who may require that another trial set(s) be made for proper apron alignment and adjustment. The vessel certificate holder shall provide at least five (5) days advance notification to the field office, Southwest Region, National Marine Fisheries Service, 1140

North Harbor Drive, Room 7, San Diego, California 92101, telephone 714-293-6540, of the time and place of installation of the porpoise apron system. The certificate of inclusion for any vessel whose certificate holder has failed to notify the National Marine Fisheries Service of the date of installation shall be invalid until completion of the apron inspection and trial set(s).

(E) Porpoise safety panel markers: Each end of the porpoise safety panel and porpoise apron shall be identified with an easily distinguishable marker.

(F) Porpoise safety panel hand holds: Throughout the length of the corkline under which the porpoise safety panel and porpoise apron are located, hand hold openings are to be secured so that the insertion of a 1⅜" diameter cylindrical-shaped object meets resistance.

(G) Porpoise safety panel corkline hangings: Throughout the length of the corkline under which the porpoise safety panel and porpoise apron are located, corkline hangings shall be inspected by the vessel operator following each trip. Hangings found to have loosened to the extent that a cylindrical object with a 1⅜" diameter will not meet resistance when inserted between the cork and corkline hangings, must be tightened so that a cylindrical object with a 1⅜" diameter cannot be inserted.

(H) Bunchlines: Bunchlines, other than bow bunchlines, shall be arranged around the perimeter of the net to allow at least three towing points to be established near one-quarter, one-half, and three-quarter net from the bow ortza. A towing point must be established between two adjacent bunchlines; one bunchline reversed or unattached at both ends. Six bunchlines other than bow bunchlines are necessary to establish three towing points. The towing ends of all bunchlines which can be utilized as towing points shall be marked so as to be clearly visible to speedboat drivers. At least a 20-fathom length of corkline shall be free from bunchlines at the apex of the backdown channel.

(I) Speedboats: Certificated vessels engaged in fishing operations involving setting on marine mammals shall carry a minimum of two speedboats in operating condition. All speedboats carried aboard purse seine vessels and in operating condition shall be rigged with towing bridles and towlines. Speedboat hoisting bridles shall not be substituted for towing bridles.

(J) Rubber raft: An inflatable rubber raft suitable to be used as a porpoise observation-and-rescue platform, shall be carried on all certificated vessels.

(K) Facemask and snorkel: At least two facemasks and snorkels shall be carried on all certificated vessels.

(L) Floodlights and spotlight: All certificated vessels shall be equipped with adequate floodlights suitable for use in darkness to attract fish toward the main vessel and spotlight to intermittently illuminate the backdown channel and apex.

(M) Vessel certificate holders may petition for an exemption from the regulations regarding vessel gear and equipment for the purpose of experimenting with alternate gear or procedures designed to reduce incidental serious injury and mortalities of marine mammals in the course of commercial fishing. The petition shall be made in writing to the Director, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731, and shall include detailed specifications of the proposed gear and procedure modifications. Modifications may be granted upon review and approval, on a trip by trip basis, only if a National Marine Fisheries Service designated representative is available and accompanies the vessel on the approved trip.

(v) *Vessel inspection:* (A) Annual: At least once during each calendar year, purse seine nets and other gear and equipment required by these regulations shall be made available for inspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region.

(B) Reinspection: Purse seine nets and other gear and equipment required by these regulations shall be made available for reinspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region. The vessel certificate holder shall notify the Fleet Assistance Section, Southwest Region, National Marine Fisheries Service, 1140 N. Harbor Drive, Room 7, San Diego, California 92101, telephone 714-293-6540 of any net modification at least five (5) days prior to departure of the vessel on its next scheduled trip in order to determine whether a reinspection or trial set would be required.

(C) Failure to pass inspection: A certificate of inclusion for a vessel with gear which is not in compliance with these regulations or maintained in a functional and seaworthy condition, shall be invalid until such deficiencies in gear or conditions are corrected and approved by an authorized National Marine Fisheries Service Inspector.

(vi) *Operator training requirements.* All operators shall maintain proficiency sufficient to perform the procedures required herein, and must attend and satisfactorily complete a formal training session conducted under the auspices of the National Marine Fisheries Service in order to obtain their certificate of inclusion. At the training session an attendee shall be instructed concerning the provisions of the Marine Mammal Protection Act of 1972, the regulations promulgated pursuant to the Act, and the fishing gear and techniques which are required or will contribute to reducing serious injury and mortality of porpoise incidental to purse seining for tuna. Operators who have received a written certificate of satisfactory completion of training and who possess a current or previous calendar year certificate of inclusion will not be required to attend additional formal training sessions unless there are substantial changes in the Act, the regulations, or the required fishing gear and techniques. Additional training may be required for any operator who is found by the Regional Director, Southwest Region, to lack proficiency in the procedures required.

(vii) *Marine mammal release requirements:* All operators shall use the following procedures during all sets involving the incidental taking of marine mammals in association with the capture and landing of tuna.

(A) Use of speedboats: On every set involving marine mammals, two speedboats equipped for towing shall be immediately available. At least one shall be manned and in the water. The second one, may be manned or unmanned, and may remain either in the water or in the davits. Both shall be ready for use until backdown commences. Speedboats shall tow on bunchlines whenever net collapse begins or on the corkline if canopies of loose webbing form whenever necessary to prevent marine mammal entrapment.

(B) Backdown procedure: Backdown shall be performed following a purse seine set in which marine mammals are captured in the course of catching and landing tuna, and shall be continued until it is no longer possible to remove live marine mammals from the net by this procedure. Thereafter, other release procedures required shall be continued until all live animals have been released from the net.

(C) Hand rescue: During backdown, a minimum of two rescuers shall aid with the release of marine mammals. If live marine mammals remain in the net after backdown, a minimum of two rescuers shall hand release them.

(D) Prohibited use of sharp or pointed instrument: The use of a sharp or pointed instrument to remove any marine mammal from the net is prohibited.

(E) Use of Rubber raft, facemask, and snorkel: A rubber raft suitable as a porpoise observation and rescue platform shall be launched inside the net near the time of tying down for the backdown maneuver. The raft shall be used by a crewman to assist the other rescuer(s) in disentangling and releasing live marine mammals from the net. The crewman in the raft shall use the facemask and snorkel to determine whether all live marine mammals are out of the net and, if they are not, make every effort to remove them before backdown is terminated.

Taking into consideration the safety of all personnel, all live marine mammals that remain in the net after backdown shall be herded to areas where they can be easily released.

(F) Prohibited brailing of live marine mammals: All release procedures shall continue until all live marine mammals are removed from the net prior to initiating the brailing operation. Brailing live marine mammals from the net is prohibited.

(G) Prohibited setting at sundown: On every set involving marine mammals, the net skiff shall be released at least one and one-half hours before sunset; release of the net skiff after this time is prohibited.

(H) Use of lights: If the backdown maneuver or other required release procedures continue past one-half hour after sunset, lights shall be used to insure that release procedures are properly performed and that all live marine mammals are removed from the net. Floodlights shall be used to attract fish toward the main vessel. A spotlight shall be intermittently used to illuminate the backdown channel and apex until all live marine mammals are removed from the net.

(viii) *Penalties:* Failure to comply with the provisions of the general permit or these regulations, including but not limited to: failure to submit upon demand to vessel, gear, equipment, or proficiency inspection or examination by authorized National Marine Fisheries Service personnel; falsification of any required logs and reports; or failure to satisfy the requirements of any provisions of these regulations will subject vessel owners, managing owners, masters, or operators to revocation of the vessel certificate of inclusion and/or to the right to be included under a general permit, and further subject vessel owners, managing owners, masters, and operators to penalties provided for under the Act, including revoking the right to be an operator as defined in § 216.24(c)(1).

(3) *Encircling gear, purse seining not involving the intentional taking of marine mammals.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(3)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus,* under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(3)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(vi) Failure to comply with the provisions of the general permit or certificate of inclusion including, but not limited to, failure to submit to an inspection of the vessel, marine mammal logs and required gear, upon demand by an authorized Federal enforcement agent, or failure to adhere to the provisions of these regulations will subject the certificate holder to a revocation of his certificate and also subject the certificate holder, vessel owner or master to the penalties provided for under the Act.

(4) *Stationary Gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(4)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (ii) were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) The location time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(vi) Failure to comply with the provisions of the general permit or certificate of inclusion including, but not limited to, failure to submit to an inspection of the vessel, marine mammal logs and required gear, upon demand by an authorized Federal enforcement agent, or failure to adhere to the provisions of these regulations will subject the certificate holder to a revocation of his certificate and also subject the certificate holder, vessel, owner or master to the penalties provided for under the Act.

(5) *Other gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(5)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(5)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent, or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(vi) Failure to comply with the provisions of the general permit or certificate of inclusion including, but not limited to, failure to submit to an inspection of the vessel, marine mammal logs and required gear, upon demand by an authorized Federal enforcement agent, or failure to adhere to the provisions of these regulations will subject the certificate holder to a revocation of his certificate and also subject the certificate holder, vessel, or master to the penalties provided for under the Act.

(vii) The number of Dall porpoise (*Phocoenoides dalli*) killed or seriously injured by Japanese vessels shall be limited to 5,500 animals per year. Any permit issued under this regulation shall indicate the measures by which the permit holder shall comply with the reporting requirements of paragraph (d)(5)(v) of this section. Any incidental take permit issued under this regulation shall allow retention of marine mammals for scientific research purposes and not require a separate permit under paragraph (d)(5)(iv).

(e) *Importation:* (1) It shall be illegal to import into the United States any fish, whether fresh, frozen or otherwise prepared, if such fish were caught in a manner prohibited by these regulations or in a manner that would not be allowed in circumstances where a person subject to the jurisdiction of the United States would be required to have a certificate of inclusion in a general permit hereunder, whether or not any marine mammals were in fact taken incidental to the catching of the fish, unless the Assistant Administrator makes a finding and publishes such finding in the FEDERAL REGISTER, that such fishing, although not in conformity with the specific requirements of these regulations, is accomplished in a manner which does not result in an incidental mortality and serious injury rate in excess of that which results from fishing operations under these regulations.

(2) The following fish and categories of fish, which the Assistant Administrator has determined are involved with commercial fishing operations which cause the death or injury of marine mammals, are subject to the prohibitions and documentation requirements of this section:

(i) Salmon and halibut. The following U.S. Tariff Schedule Item Numbers identify these categories of salmon and halibut products which are imported into the United States and are to be covered by the documentation and certification regulations of § 216.24(e)(3):

110.20-25 Halibut, fresh or chilled.
110.20-30 Halibut, frozen.
110.20-45 Salmon, fresh or chilled.
110.10-50 Salmon, frozen.
110.70-40 Halibut, other—except portion controlled steaks.
111.48-00 Salmon, salted.
111.88-00 Salmon, smoked or kippered.
112.18-00 Salmon, preserved, not in oil.

(ii) Yellowfin tuna. The following U.S. Tariff Schedule Item Numbers identify the categories of tuna and tuna products under which yellowfin tuna is imported into the United States, and are subject to the importation restrictions of paragraph (e)(4) of this section after December 31, 1977:

110.10-20 Tuna; yellowfin, whole fish.
110.10-25 Tuna; yellowfin, eviscerated, head on.
110.10-30 Tuna; yellowfin, eviscerated, head off.
110.10-37 Tuna; yellowfin, other.
112.30-40 Tuna; canned, other than white meat, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.
112.34-00 Tuna; canned, other, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.
112.90-00 Tuna; canned, other, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.

(3) Salmon and halibut. All fish and categories of fish listed in paragraph (e)(2)(i) of this section shall be denied entry into the United States unless accompanied by a separate Fisheries Certificate of Origin (Standard Form 369-1) from each country whose flag vessels caught fish involved in the importation. The Fisheries Certificate of Origin should include the following information:

(i) The country of origin; and

(ii) The identity and quantity of fish; and, either

(iii) After the Assistant Administrator has published the finding referred to in paragraph (e)(1) of this section, a statement from a responsible official of the country of origin that the fishing technology permitted by the country of origin with respect to the species of fish presented for importation into the United States does not result in a rate of serious injury or death to marine mammals in excess of that which results from U.S. commercial fishing operations as prescribed by these regulations. Country of origin for the purposes of this section shall mean the country under whose flag the fish catching vessels are documented and whose fish are a part of any cargo or shipment of fish to be imported into the U.S. regardless of any transshipments; or

(iv) A statement by a responsible official of the country of origin or the master of the vessel which caught the fish that such fish were not caught in a manner prohibited for U.S. fishermen by these regulations. The statement shall identify the species, quantity, and exporter of the fish to which the statement refers; or

(v) Any nation may certify to the Assistant Administrator either (A) that all of its vessels fishing under its flag are fishing in conformance with these regulations; or (B) a list of the vessels, by name and official number, fishing under such nation's flag which are fishing in conformance with these regulations; or (C) that all of the vessels fishing under such nation's flag, with the exception of any vessels specifically listed by name and official number, are fishing in conformance with these regulations. If methods (B) or (C) are used, the shipping documentation must also show the name and official number of the vessel which caught the fish presented for importation. The Assistant Administrator may then make a finding, and publish such finding in the FEDERAL REGISTER, that fish imports listed in paragraphs (e)(2)(i) from a nation or from an identified segment of a nation's fishing fleet, are exempted from the documentation provisions of this section.

(4)(i) Yellowfin tuna: All shipments of fish and products listed in paragraph (e)(2)(ii) of this section, from any nation, shall not be entered into the United States for consumption or withdrawn from warehouse for consumption unless a finding has been made pursuant to paragraph (e)(5)(i) of this section, and unless accompanied by the following documentation: (A) A separate Yellowfin Tuna Certificate of Origin (Standard Form 370-1) and (B) a bill of lading from each country whose flag vessels caught yellowfin tuna involved in the importation.

(ii) The Yellowfin Tuna Certificate of Origin must include the following information: (A) Country of origin of the fishing vessel(s) involved; (B) Exporter (name and address); (C) Consignee (name and address); (D) Identity and quantity of the yellowfin tuna to be imported, listed by U.S. Tariff Schedule Number; (E) Name of vessel(s) which caught the yellowfin tuna; (F) Fishing method used (i.e., purse seine, longline, pole and line, etc.); (G) Other documentation as may be required by the Assistant Administrator, subsequent to granting a finding in paragraph (e)(5) of this section; (H) Must be signed by either a responsible government official of the country whose flag vessel caught the fish or the vessel master, below the following certification statements:

I certify that the yellowfin tuna described in (D) above was caught by flag vessels of a country either, (1) not required to obtain a finding from the United States Department of Commerce (National Marine Fisheries Service) under 50 CFR 216.24(e)(5), and the fish was not caught in a manner prohibited for United States fishermen by the United States Marine Mammal Regulations 50 CFR 216.24(d)(2), or (2) which has been found by the United States Department of Commerce (National Marine Fisheries Service) to be in conformance with the United States Marine Mammal Regulations 50 CFR 216.24(e)(5).

I certify that the above information is complete, true and correct to the best of my knowledge and belief. I understand that my making a false statement may subject me to the criminal penalties under the Marine Mammal Protection Act of 1972.

(I) Must also be signed by the exporter, under the following declaration:

The undersigned hereby declares that, based on the above statements, the yellowfin tuna herein offered for importation into the United States, was caught by flag vessels of (country) in conformance with the United States Marine Mammal Regulations 50 CFR 216.24.

(5)(i) Any tuna or tuna products in the classifications listed in paragraph (e)(2)(ii) of this section from countries of origin (as documented under (e)(4) above) whose vessels operate in the yellowfin tuna purse seine fishery in the eastern tropical Pacific Ocean, as determined by the Assistant Administrator; shall not be entered into the United States for consumption or subsequently withdrawn from warehouse for consumption unless the Assistant Administrator makes a finding in consultation with the U.S. Department of State, and publishes such finding in the FEDERAL REGISTER that fishing operations in the country of origin are conducted in conformance with U.S. regulations and standards as stated in paragraph (d)(2) of this section. The Assistant Administrator may make a finding that, although not in conformity with these regulations, such fishing is accomplished in a manner which does not result in an incidental mortality and serious injury in excess of that which result from U.S. fishing operations under these regulations. Upon such a finding unloading may be allowed. Country of origin for the purposes of this section (§ 216.24(e)) shall mean the country under whose flag the fish catching vessels are documented and whose fish are a part of any cargo or shipment of fish to be imported into the U.S. regardless of any transshipments.

(ii) Countries of origin desiring to obtain a finding which will allow the importation of products listed in paragraph (e)(2)(ii) of this section must submit, by appropriate government official, to the Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235, the following information: (A) A statement of the quantity and type (identified by U.S. Tariff Schedule Item Numbers listed in paragraph (e)(2)(i) of this section) of fish or fish products expected to be imported into the U.S.; (B) A detailed description of the fishing technology and procedures utilized in tuna purse seine fishing to protect marine mammals so that a determination of conformance with § 216.24(d)(2) of these regulations can be made, or the effectiveness of any other equivalent technology or procedures can be assessed; (C) A statement of the number of marine mammals killed or seriously injured (by species) incidental to the yellowfin tuna purse seine operations on porpoise for the previous year, and the manner in which the information was obtained (logbooks, observers, interviews, or other procedures); (D) A statement of the number of marine mammals which will be allowed to be killed or seriously injured annually incidental to yellowfin tuna purse seine operations; (E) A statement of the procedures to be required, including quotas and other controls which will meet the U.S. requirements to limit the level of mortality with specific reference to any species or stock designated as depleted; and (F) A list of vessels which may be involved in the taking of marine mammals incidental to yellowfin tuna purse seining.

(iii) The Assistant Administrator will review each nation's findings annually upon receipt of information required under paragraph (e)(5)(ii) which pertains to a preceeding calendar year, and a request of a continuation of a finding by the country of origin. This information should be submitted by September 1 preceding the calendar year for which the exportation is requested. The Assistant Administrator may require verification of statements made in connection with requests to allow importations. The Assistant Administrator will reconsider a finding upon a request from, and the submission of additional information from, the country of origin.

(6) *Fish refused entry.* If fish is denied entry under the provisions of § 216.24(e)(3) or (e)(4), the District Director of Customs shall refuse to release the fish for entry into the United States and shall issue a notice of such refusal to the importer or consignee.

(7) *Release under bond. Provided however,* that fish not accompanied or covered by the required documentation or certification when offered for entry may be entered into the United States if the importer or consignee gives a bond on Customs Form 7551, 7553, or 7595 for the production of the required documentation or certification. The bond shall be in the amount required under 19 CFR 25.4(a). Within 90 days after such Customs entry, or such additional period as the District Director of Customs may allow for good cause shown, the importer or consignee shall deliver a copy of the required documentation or certification to the District Director of Customs, and an original of the required documentation or a copy of the certification to the Regional Director of the National Marine Fisheries Service, unless the District Director of Customs has received notification from the National Marine Fisheries Service that the fish is covered by a certification. If such documentation, certification, or notification is not delivered to the District Director of Customs for the port of entry of such fish within 90 days of the date of Customs entry or such additional period as may have been allowed by the District Director of Customs for good cause shown, the importer or consignee shall redeliver or cause to be redelivered to the District Director of Customs those fish which were released in accordance

with this paragraph. In the event that any such fish is not redelivered within 30 days following the date specified in the preceding sentence, liquidated damages shall be assessed in the full amount of bond given on Form 7551. When the transaction has been charged against a bond given on Form 7553 or 7595, liquidated damages shall be assessed in the amount that would have been demanded under the preceding sentence under a bond given on Form 7551. Fish released for entry into the United States through use of the bonding procedure provided in this paragraph shall be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act if (i) the required documentation or certification is not delivered to the Regional Director of the National Marine Fisheries Service within 90 days of the date of Customs entry, or such additional period as may have been allowed by the District Director of Customs for good cause shown, or (ii), the required certification is not on file in the office of the Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atomspheric Administration, Department of Commerce, Washington, D.C. 20235, within this 90 day period or such additional period as may have been allowed by the District Director of Customs for good cause shown. Fish refused entry into the United States shall also be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act.

(8) *Disposition of fish refused entry into the United States; redelivered fish.* Fish which is denied entry under § 216.24(e)(3) or (e)(4) or which is redelivered in accordance with § 216.24(e)(7) and which is not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery shall be disposed of under Customs laws and regulations. *Provided however,* that any disposition shall not result in an introduction into the United States of fish caught in violation of the Marine Mammal Protection Act of 1972.

(f) *Observers*—(1) The vessel certificate holder of any certificated vessel shall, upon the proper notification by the National Marine Fisheries Service, allow an observer duly authorized by the Secretary to accompany the vessel on any or all regular fishing trips for the purpose of conducting research and observing operations, including collecting information which may be used in civil or criminal penalty proceedings, forfeiture actions, or permit or certificate sanctions.

(2) Research and observation duties shall be carried out in such a manner as to minimize interference with commercial fishing operations. The navigator shall provide true vessel locations by latitude and longitude, accurate to the nearest minute, upon request by the observer. No owner, master, operator, or crew member of a certificated vessel shall impair or in any way interfere with the research or observations being carried out.

(3) Marine mammals killed during fishing operations which are accessible to crewmen and requested from the certificate holder or master by the observer shall be brought aboard the vessel and retained for biological processing, until released by the observer for return to the ocean. Whole marine mammals designated as biological specimens by the observer shall be retained in cold storage aboard the vessel until retrieved by authorized personnel of the National Marine Fisheries Service when the vessel returns to port for unloading.

(4) The Secretary shall provide for the payment of all reasonable costs directly related to the quartering and maintaining of such observers on board such vessels. A vessel certificate holder who has been notified that the vessel is required to carry an observer, via certified letter from the National Marine Fisheries Service, shall notify the office from which the letter was received at least five days in advance of the fishing voyage to facilitate observer placement. A vessel certificate holder who has failed to comply with the provisions of this section may not engage in fishing operations for which a general permit is required.

(5) It is unlawful for any person to forcibly assault, impede, intimidate, interfere with, influence or attempt to influence an observer placed aboard a vessel.

(g) *Penalties and rewards:* Any person or vessel subject to the jurisdiction of the United States shall be subject to the penalties provided for under the Act for the conduct of fishing operations in violation of these regulations. The Secretary shall recommend to the Secretary of the Treasury that an amount equal to one-half of the fine incurred but not to exceed $2,500 be paid to any person who furnishes information which leads to a conviction for a violation of these regulations. Any officer, employee, or designated agent of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

[45 FR 72187, Oct. 31, 1980, as amended at 46 FR 27056, May 15, 1981; 46 FR 42069, Aug. 19, 1981]

§ 216.25 Exempted marine mammals and marine mammal products.

(a) The provisions of the Act and these regulations shall not apply:

(1) To any marine mammal taken before December 21, 1972, or

(2) To any marine mammal product if the marine mammal portion of such product consists solely of a marine mammal taken before such date.

(b) The prohibitions contained in § 216.12(c)(3) and (4) shall not apply to marine mammals or marine mammal products imported into the United States before the date on which a notice is published in the FEDERAL REGISTER with respect to the designation of the species or stock concerned as depleted or endangered.

(c) Section 216.12(b) shall not apply to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

§ 216.26 Collection of certain marine mammal parts.

(a) Any bones, teeth or ivory of any dead marine mammal may be collected from a beach or from land within ¼ of a mile of the ocean. The term "ocean" includes bays and estuaries.

(b) Marine mammal parts so collected may be retained if registered within 30 days with an agent of the National Marine Fisheries Service, or an agent of the Bureau of Sport Fisheries and Wildlife.

(c) Registration shall include (1) the name of the owner, (2) a description of the article to be registered and (3) the date and location of collection.

(d) Title to any marine mammal parts collected under this section is not transferable unless consented to, in writing, by the Secretary.

Subpart D—Special Exceptions

§ 216.31 Scientific research permits and public display permits.

(a) The Director may issue permits authorizing the taking and importing of marine mammals for scientific research and public display except that no display permits will be issued for marine mammals from a species listed as depleted under § 216.15 of this part. Any person desiring to obtain such a permit may make application therefore to the Secretary. The sufficiency of the application shall be determined by the Secretary and, in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The following information will be used as the basis for determining whether an application is complete and whether scientific research or a public display permit should be issued by the Secretary of Commerce. The Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals will review all completed applications submitted to them by the Secretary pursuant to paragraph (b) of this section (39 FR 1851, January 15, 1974.) An original and four copies of the completed application shall be submitted to the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20235. Assistance may be obtained by writing the Director or calling the Law Enforcement and Marine Mammal Protection Division in Washington, D.C. (area code 202), phone number 343-

7780. In preparing an application for a scientific research or public display permit, provide the following information:

(1) Title: As applicable, either—

(i) Application for Public Display Permit Under the Marine Mammal Protection Act of 1972, or

(ii) Application for Scientific Research Permit Under the Marine Mammal Protection Act of 1972.

(2) List the date of the application.

(3) If the Applicant is a partnership or a corporate entity set forth the details. If the marine mammal to be taken or imported, or the marine mammal product to be imported, is to be utilized or displayed by a party other than the Applicant, set forth the name of the party and such other information as would be required if such party were an Applicant.

(4) Provide a statement on the purpose of the proposed taking or importing, including a brief description of:

(i) The need for the marine mammal(s) and/or marine mammal product(s); and

(ii) How they will be used.

(5) If the application is for a scientific research permit, provide the following additional information:

(i) A detailed description of the scientific research project or program in which the marine mammal or product thereof is to be used, including the period of time over which the research will be conducted;

(ii) A list of the names and addresses of the sponsors or cooperating institutions and the scientists involved;

(iii) A copy of the formal research proposal or contract if one has been prepared;

(iv) A statement of whether the proposed research has broader significance than the individual researcher's goals (i.e., does the proposed research respond directly or indirectly to recommendations of any national or international scientific body charged with research or management of marine mammals and, if so, how?); and

(v) A description of the arrangements, if any, for the disposition of any dead specimen or its skeleton or other remains, for the continual benefit to science, in a museum or other institutional collection.

(6) Describe any marine mammals to be taken or imported, whether for public display or scientific research or any marine mammal products to be imported, including the following:

(i) A list of each species to be taken or imported and the number of each, including the common and scientific name;

(ii) A physical description of each animal to be taken or imported, including the age, size, and sex;

(iii) A list of the probable dates of capture and importation for each animal and the location of capture and importation, as specifically as possible;

(iv) A description of the status of the stock of each species related insofar as possible to the location or area of taking;

(v) A description of the manner of taking for each marine mammal, including the gear to be used;

(vi) The name and qualifications of the persons or entity which will capture the animals;

(vii) If the capture is to be done by a contractor, a statement as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the capture. Accompany such statement with a copy of the proposed contract or a letter from the contractor indicating agreement to capture the animals, should a permit be granted;

(viii) In the case of imported animals, indicate, if known, the management and protection programs of the country from which the animal originates; and

(ix) For any marine mammal products to be imported, provide the information sought in this paragraph for all marine mammals from which component parts of such products are derived.

(7) Describe the manner of transportation of any marine mammal taken or imported, including:

(i) Mode of transportation;

(ii) Name of transportation company;

(iii) Length of time in transit for the transfer of the animal(s) from the capture site to the research or display facility;

(iv) Length of time in transit for any future move or transfer of the animal(s) that is planned;

(v) The qualifications of the common carrier or agent used for transportation of the animals;

(vi) A description of the pen, container, cage, cradle, or other devices used, both to hold the animal at the capture site and during transportation;

(vii) Special care before and during transportation, such as salves, antibiotics, moisture; and

(viii) A statement as to whether the animals will be accompanied by a veterinarian or other similarly qualified person, and the qualifications of such person.

(8) Describe the contemplated care and maintenance of any mammals sought, including a complete description of the facilities where any such mammals will be maintained or displayed, including:

(i) The dimensions of the pools or other holding facilities and the number of animals by species to be held in each;

(ii) The water supply, amount, and quality;

(iii) The diet, amount and type, for all animals;

(iv) Sanitation practices used;

(v) Qualifications and experience of the staff; and

(vi) A written certification from a licensed veterinarian knowledgeable in the field of marine mammals that he has personally reviewed the arrangements for transporting and maintaining the animal(s) and that in his opinion they are adequate to provide for the wellbeing of the animal.

(9) If the application is for public display, provide a detailed description of the proposed display, including:

(i) A description of the manner, location, and number of times per day and per week the animal(s) will be displayed;

(ii) An indication as to whether the display is for profit;

(iii) An estimate of the numbers and types of people who it is estimated will benefit by such display;

(iv) A list of any educational or scientific programs connected to the contemplated dipslay; and

(v) A description of the Applicant's enterprise and its connections with any governmental, educational, medical, or other scientific entities.

(10) If the marine mammal to be taken or imported is listed as an endangered species pursuant to the Endangered Species Act of 1969 or any Act superseding it, or has been designated by the Secretary as depleted, or if the marine mammal product to be imported is composed in whole or in part from such mammal, provide a detailed justification of the need for such mammal(s), or product(s) including a discussion of possible alternatives, whether or not under the control of the Applicant. Please note that pursuant to the Act and interim regulations that no public display permits may be issued for such endangered or depleted species.

(11) For the year preceding the date of this application, provide a detailed description of all marine mammal mortalities, including:

(i) A list of all marine mammals captured, transported, maintained, displayed, or utilized for scientific research and/or for all marine mammals caused to be captured, transported, maintained, displayed, or utilized for scientific research, by the Applicant.

(ii) The numbers of mortalities among such mammals, by species, by date and location of such mortalities;

(iii) The cause(s) of any such mortalities; and

(iv) The steps which have been taken by the Applicant to avoid or decrease any such mortalities.

(12) A certification in the following language:

> I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties provided under the Marine Mammal Protection Act of 1972.

(13) The applicant must sign the application.

(b) Upon receipt of an application for a scientific research permit or a public display permit, the Secretary shall forward the application to the Marine Mammal Commission together with a request for the recommendations of the Commission and the Committee of Scientific Advisors on Marine Mammals on the permit application. In order to comply with the time limits provided in these regulations, the Secretary shall request that such recommendation be submitted within 30 days of receipt of the application by the Commission. If the Commission or the Committee, as the case may be, does not respond within 30 days from the receipt of such application by the Commission, the Secretary shall advise the Commission in writing that failure to respond within 45 days from original receipt of the application (or such longer time as the Secretary may establish) shall be considered as a recommendation from the Commission and the Committee that the permit be issued. The Secretary may also consult with any other person, institution or agency concerning the application.

(c) Permits applied for under this section shall be issued, suspended, modified and revoked pursuant to regulations contained in § 216.33. In determining whether to issue a scientific research permit, the Secretary shall, among other criteria, consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; and whether the granting of the permit is required to further a bone fide and necessary or desirable scientific purpose, taking into account the benefits anticipated to be derived from the scientific research contemplated and the effect of the proposed taking or importation on the population stock and the marine ecosystem. In determining whether to issue a public display permit, the Secretary shall, among other criteria, consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; whether the marine mammal in question is from a species listed as depleted under § 216.15 of this part; whether a substantial public benefit will be gained from the display contemplated, taking into account the manner of the display and the anticipated audience on the one hand, and the effect of the proposed taking or importation on the population stocks of the marine mammal in question and the marine ecosystem on the other; and the applicant's qualifications for the proper care and maintenance of the marine mammal or the marine mammal product, and the adequacy of his facilities.

(d) Permits applied for under this section shall contain terms and conditions as the Secretary may deem appropriate, including

(1) The number and kind of marine mammals which are authorized to be taken or imported;

(2) The location and manner in which such marine mammals may be taken or from which they may be imported;

(3) The period during which the permit is valid;

(4) The methods of transportation, care and maintenance to be used with live marine mammals;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the marine mammal, its progeny or the marine mammal product; and

(8) A reasonable fee covering the costs of issuance of such permit, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

[39 FR 1852, Jan. 15, 1974, amended at 39 FR 14348, Apr. 23, 1974; 41 FR 30120, July 22, 1976]

§ 216.32 [Reserved]

§ 216.33 Procedures for issuance of permits and modification, suspension or revocation thereof.

(a) Whenever application for a permit is received by the Secretary which the Secretary deems sufficient, he shall, as soon as practicable, publish a notice thereof in the Federal Register. Such notice shall set forth a summary of the information contained in such application. Any interested party may, within 30 days after the date of publication of such notice, submit to the Secretary his written data or views with respect to the taking or importation proposed in such application and may request a hearing in connection with the action to be taken thereon.

(b) If a request for a hearing is made within the 30-day period referred to in paragraph (a) of this section, or if the Secretary determines that a hearing would otherwise be advisable, the Secretary may, within 60 days after the date of publication of the notice referred to in paragraph (a) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the FEDERAL REGISTER not less than 15 days in advance of such hearing. Any interested person may appear in person or through representatives at the hearing and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(c) As soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section) the Secretary shall issue or deny issuance of the permit. Notice of the decision of the Secretary shall be published in the FEDERAL REGISTER within10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(d) Any permit shall be subject to modification, suspension, or revocation by the Secretary in whole or in part in accordance with these regulations and the terms of such permits. The permittee shall be given written notice by registered mail, return receipt requested, of any proposed modification, suspension, or revocation. Such notice shall specify:

(1) The action proposed to be taken along with a summary of the reasons therefore; and

(2) The steps which the Permittee may take to demonstrate or achieve compliance with all lawful requirements;

(3) Shall advise the permittee that he is entitled to a hearing thereon, if a written request for such a hearing is received by the Secretary within 10 days after receipt of the aforesaid notice or such other date as may be specified in the notice by the permittee. The time and place for the hearing, if requested by the permittee, shall be determined by the Secretary and written notice thereof given to the permittee by registered mail, return receipt requested, not less than 15 days prior to the date of hearing specified. The Secretary may, in his discretion, allow participation at the hearing by interested members of the public. The permittee and others participating may submit all relevant material, data, views, comments, arguments, and exhibits at the hearing. A summary record shall be kept of any such hearing.

(e) The Secretary shall make a decision regarding the proposed modification, suspension, or revocation, as soon as practicable after the close of the hearing, or if no hearing is held, as soon as practicable after the close of the 10-day period during which a hearing could have been requested. Notice of the modification, suspension, or revocation shall be published in the FEDERAL REGISTER within 10 days from the date of the Secretary's decision. In no event shall the proposed action take effect until notice of the Secretary's decision is published in the FEDERAL REGISTER.

§ 216.34 Possession of permits.

(a) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or an agent of such person) during:

(1) The time of the authorized taking or importation;

(2) The period of any transit of such person or agent which is incident to such taking or importation; and

(3) Any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent.

(b) A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

Subpart E—Designated Ports

§ 216.40 Importation at designated ports.

(a) Any marine mammal or marine mammal product which is subject to the jurisdiction of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce and is intended for importation into the United States shall be subject to the provisions of 50 CFR Part 14.

(b) For the information of importers, designated ports of entry for the United States are:

New York, N.Y.
Miami, Fla.
Chicago, Ill.
San Francisco, Calif.
Los Angeles, Calif.
New Orleans, La.
Seattle, Wash.
Honolulu, Hi.

(c) Additionally, marine mammals or marine mammal products which are entered into Alaska, Hawaii, Puerto Rico, Guam, American Samoa or the Virgin Islands and which are not to be forwarded or transhipped within the United States may be imported through the following ports:

Alaska—Juneau, Anchorage, Fairbanks
Hawaii—Honolulu
Puerto Rico—San Juan
Guam—Honolulu, Hi.
American Samoa—Honolulu, Hi.
Virgin Islands—San Juan, P.R.

(d) Importers are advised to see 50 CFR Part 14 for importation requirements and information.

Subpart F—Penalties and Procedures for Their Assessment

§ 216.51 Penalties.

Any person who violates any provision of the Act or of any permit or regulation, including without limitation, conditions imposed by the Secretary with respect to the taking, importing, maintenance or transporting of marine mammals or marine mammal products, issued thereunder may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation. Each unlawful taking or importation shall be a separate offense.

§ 216.52 Notice of proposed assessment; opportunity for hearing.

(a) Prior to the assessment of a civil penalty pursuant to section 105(a) of the Act, a notice of proposed assessment issued by the Secretary shall be served personally or by registered or certified mail, return receipt requested, upon the person believed to be subject to a penalty (the respondent). The notice shall contain:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provisions of the Act, regulations, or permit allegedly violated; and

(3) The amount of penalty proposed to be assessed. The notice shall inform the respondent that he has 20 days from receipt of the notice in which to request a hearing or to waive it. The request or waiver shall be in writing and addressed to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235. The notice shall further inform the respondent that if he does not respond to the notice within the 20 days allowed, he shall be deemed to have waived his right to a hearing and to have consented to the making of an assessment without a hearing.

(b) With his request for a hearing or with his written waiver of a hearing, the respondent may submit objections to the proposed assessment. He may deny the existence of the violation or ask that no penalty be assessed or that the amount be reduced. The respondent must set forth in full all facts supporting his denial of the alleged violation or his request for relief.

§ 216.53 Waiver of hearing; assessment of penalty.

(a) If a written waiver of a hearing is timely made, or if a hearing is deemed to have been waived as provided in § 216.52(a), the Secretary shall proceed either to make an assessment of a civil penalty or to rescind the proposed assessment, taking into consideration such showing as may have been made by respondent pursuant to § 216.52(b). Such action shall become the final administrative decision of the Secretary when rendered, and any civil penalty assessed shall be collected in accordance with § 216.62. Notice of such final decision shall be promptly sent to the respondent by registered or certified mail, return receipt requested.

(b) If, despite the waiver of a hearing, the Secretary believes that there are material facts at issue which cannot otherwise be satisfactorily resolved, he may refer the case to a presiding officer as provided in § 216.54.

[39 FR 1852, Jan. 15, 1974, as amended at 40 FR 54427, Nov. 24, 1975]

§ 216.54 Assignment of presiding officer and agency representative; notice of hearing.

(a) If a written request for a hearing has been timely made, or the Secretary determines, pursuant to § 216.53(b), that a hearing should be held, the Secretary shall assign a presiding officer to the case. Written notice of the assignment shall be promptly given to the respondent, together with the name and address of the person who will present evidence on behalf of the Secretary at the hearing (the agency representative), and thereafter all pleadings and other documents shall be filed directly with the presiding officer, with a copy served on the agency representative or the respondent as the case may be.

(b) The Secretary shall deliver to the administrative law judge a copy of the notice of proposed assessment, any response of the respondent thereto, and other materials deemed relevant to the case and shall furnish to the respondent a copy of any such materials not already in respondent's possession.

(c) The presiding officer shall promptly cause to be served on the parties notice of the time and place of the hearing, which shall not be less than 10 days after service of the notice of hearing except in extraordinary circumstances.

[39 FR 1852, Jan. 15, 1974, as amended at 40 FR 54427, Nov. 24, 1975; 41 FR 20589, May 19, 1976]

§ 216.55 Failure to appear; official transcript; record for decision.

(a) If the respondent fails to appear at the hearing, he will be deemed to have consented to a decision being rendered on the record made at the hearing.

(b) The Secretary shall provide the services of an official reporter who shall make the [only] official transcript of the proceedings. Copies of the official transcript may be obtained from the official reporter upon payment of the charges therefor.

(c) The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision.

§ 216.56 Duties and powers of the presiding officer.

(a) It shall be the duty of the presiding officer to inquire fully into the facts as they relate to the matter before him. Upon assignment to him and before submission of the case, pursuant to § 216.60, to the Secretary, the presiding officer shall have authority to

(1) Rule on offers of proof and receive relevant evidence;

(2) Take or cause depositions to be taken whenever the ends of justice would be served thereby;

(3) Regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in misconduct, and strike all testimony of witnesses refusing to answer any questions ruled to be proper which are related to such questions;

(4) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon his own motion;

(5) Dispose of procedural requests, motions or similar matters and order hearings reopened prior to issuance of the presiding officer's report and recommendations;

(6) Grant requests for appearance of witnesses or production of documents;

(7) Limit lines of questioning or testimony which are immaterial, irrelevant, or unduly repetitious;

(8) Examine and cross-examine witnesses and introduce into the record documentary or other evidence;

(9) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(10) Continue, at his discretion, the hearing from day-to-day, or adjourn it to a later date or to a different place;

(11) Take official notice of any matters not appearing in evidence in the record which are among the traditional matters of judicial notice; or of technical or scientific facts within the general or specialized knowledge of the Department of Commerce as an expert body; or of a document required to be filed with or published by a duly constituted Government body: *Provided,* That the parties shall be given notice, either during the hearing or by reference in the presiding officer's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary;

(12) Prepare, serve, and submit his report and recommendations pursuant to § 216.60;

(13) Take any other action necessary and not prohibited by this section.

[39 FR 1852, Jan. 15, 1974, as amended at 40 FR 54427, Nov. 24, 1975]

§ 216.57 Appearance of the respondent and the agency representative.

The respondent and the agency representative shall have the right to appear at such hearing in person, by counsel, or by other representative, to examine and cross-examine witnesses to the extent required for a full and true disclosure of the facts, to conduct oral argument at the close of testimony and to introduce into the record relevant documentary or other evidence, except that the participation of either party shall be limited to the extent prescribed by the presiding officer.

[39 FR 1852, Jan. 15, 1974, as amended at 40 FR 54427, Nov. 24, 1975]

§ 216.58 Evidence.

All evidence which is relevant, material, reliable, and probative, and not unduly repetitious or cumulative, shall be admissible in the hearing.

§ 216.59 Filing of briefs.

The respondent and the agency representative may submit a brief to the presiding officer. The original and one copy of such brief shall be filed within 7 days after the close of the hearing, except that the presiding officer may, for good cause, grant an extension of such time for filing.

[39 FR 1852, Jan. 15, 1974, as amended at 40 FR 54427, Nov. 24, 1975]

§ 216.60 Decisions.

(a) After the close of the hearing and the receipt of briefs, if any, the presiding officer shall expeditiously prepare an initial decision. The initial decision shall contain findings of fact, conclusions, and the reasons or basis therefor, upon the materials issues presented, and shall specifically find whether the respondent committed the violations alleged and, if so, the amount of the civil penalty to be assessed.

(b) The presiding officer shall cause his initial decision to be served on the respondent and the agency representative within 20 days after the close of the hearing or the receipt of all briefs, whichever is later, and shall forthwith transfer the record in the case to the Secretary.

(c) Within 10 days of receipt of the initial decision of the presiding officer, either the respondent or the agency representative may file with the Secretary an appeal of the initial decision. If no appeal is received within such period, the initial decision shall become the final administrative decision of the Secretary. If an appeal is received within such period, the Secretary shall render a final decision after considering the record and the appeal. Notice of an appeal by either party shall be promptly given in writing to the other party and notice of the Secretary's final decision upon appeal shall be promptly given in writing to both parties.

[39 FR 1852, Jan. 15, 1974, as amended at 40 FR 54427, Nov. 24, 1975]

§ 216.61 Remission or mitigation.

For good cause shown, the Secretary may at any time remit or mitigate the assessment of a civil penalty made under the provisions of these regulations.

§ 216.62 Payment of penalty.

The respondent shall have 30 days from receipt of the final assessment decision within which to pay the penalty assessed. Upon a failure to pay the penalty, the Secretary may request the Attorney General to institute a civil action in the appropriate United States District Court to collect the penalty.

§ 216.63 Forfeiture and return of seized property.

(a) Whenever any cargo or marine mammal or marine mammal product has been seized pursuant to section 107 of the Act, the Secretary shall expedite any proceedings commenced under these regulations.

(b) Whenever a civil penalty has been assessed by the Secretary under these regulations, any cargo, marine mammal, or marine mammal product seized pursuant to section 107 of the Act shall be subject to forfeiture. If respondent voluntarily forfeits any such seized property or the monetary value thereof without court proceedings, the Secretary may apply the value thereof, if any, as determined by the Secretary, toward payment of the civil penalty.

(c) Whenever a civil penalty has been assessed under these regulations, and whether or not such penalty has been paid, the Secretary may request the Attorney General to institute a civil action in an appropriate United States District Court to compel forfeiture of such seized property or the monetary value thereof to the Secretary for disposition by him in such manner as he deems appropriate. If no judicial action to compel forfeiture is commenced within 30 days after final decision-making assessment of a civil penalty, pursuant to § 216.60, such seized property shall immediately be returned to the respondent.

(d) If the final decision of the Secretary under these regulations is that respondent has committed no violation of the Act or of any permit or regulations issued thereunder, any marine mammal, marine mammal product, or other cargo seized from respondent in connection with the proceedings under these regulations, or the bond or other monetary value substituted therefor, shall immediately be returned to the respondent.

(e) If the Attorney General commences criminal proceedings pursuant to section 105(b) of the Act, and such proceedings result in a finding that the person accused is not guilty of a criminal violation of the Act, the Secretary may institute proceedings for the assessment of a civil penalty under this part: *Provided*, That if no such civil penalty proceedings have been commenced by the Secretary within 30 days following the final disposition of the criminal case, any property seized pursuant to section 107 of the Act shall be returned to the respondent.

(f) If any seized property is to be returned to the respondent, the Regional Director shall issue a letter authorizing such return. This letter shall be dispatched to the respondent by registered mail, return receipt requested, and shall identify the respondent, the seized property, and, if appropriate, the bailee of the seized property. It shall also provide that upon presentation of the letter and proper identification, the seized property is authorized to be released. All charges for storage, care, or handling of the seized property accruing 5 days or more after the date of the return receipt shall be for the account of the respondent: *Provided*, That if it is the final decision of the Secretary under these regulations that the respondent has committed the alleged violation, all charges which have accrued for the storage, care, or handling of the seized property shall be for the account of the respondent.

§ 216.64 Holding and bonding.

(a) Any marine mammal, marine mammal product, or other cargo seized pursuant to section 107 of the Act shall be delivered to the appropriate Regional Director of the National Marine Fisheries Service (see § 201.2 of this title) or his designee, who shall either hold such seized property or arrange for the proper handling and care of such seized property.

(b) Any arrangement for the handling and care of seized property shall be in writing and shall state the compensation to be paid. The Regional Director of the National Marine Fisheries Service, or his designee, shall attempt immediately to notify the respondent by telephone, but in any case shall, within 48 hours of the receipt of the seized property, dispatch notice thereof by registered or certified mail, return receipt requested, to the respondent. Such notice shall describe the property seized, including its declared value, and state the time, place, and reason for the seizure. Such notice shall also give the name and telephone number of a person in the Regional Director's Office who may be contacted regarding such seized property.

(c) The Regional Director of the National Marine Fisheries Service, upon written request of the respondent, may permit the respondent to post a bond or other surety satisfactory to the Regional Director, in lieu of the seized property: *Provided*, That posting of bond or other surety will not be permitted in the case of a living marine mammal seized under the Act. Such bond or other surety shall be in the amount of $5,000 for each alleged violation, as determined by the Regional Director, or an amount equal to the value of the seized property, whichever is greater. Such posting of bond or other surety will not be permitted unless the Regional Director is convinced that the respondent intends to maintain possession or control of the seized property until all proceedings regarding the seized property are completed; or unless the Regional Director is convinced that release of the seized property will not adversely interfere with such proceedings or with the purposes of the Act.

§ 216.65 Enforcement officers.

Enforcement Agents of the National Marine Fisheries Service shall enforce the provisions of the Act and may take any actions authorized by the Act with respect to enforcement. In addition, the Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal Agency for the purposes of enforcing this Act. Pursuant to the terms of section 107(b) of the Act, the Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this Act.

Subpart G—Notice and Hearing on Section 103 Regulations

SOURCE: 40 FR 10183, Mar. 5, 1975, unless otherwise noted.

§ 216.70 Basis and purpose.

(a) Sections 101(a)(2), 101(a)(3)(A), and 101(b) 16 U.S.C. 1371(a)(2), 1371(a)(3)(A), 1371(b) (1972)) of the Act and these regulations authorize the Director, National Marine Fisheries Service, to (1) impose regulations governing the taking of marine mammals incidental to commercial fishing operations; (2) waive the moratorium and to adopt regulations with respect to the taking and importing of animals from each species of marine mammals under his jurisdiction; (3) prescribe regulations governing the taking of depleted marine mammals by any Indian, Aleut or Eskimo, respectively. In prescribing regulations to carry out the provisions of said sections, the Act refers the Director to section 103 (16 U.S.C. section 1373 (1972)). In accordance with section 103(d), regulations must be made on the record after opportunity for an agency hearing on such regulations and, in the case of a waiver, on the determination by the Director to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A) 1972)).

(b) The purpose of this subpart is to establish rules of practice and procedure for all hearings conducted pursuant to section 103(d).

§ 216.71 Definitions.

Definitions shall be the same as in Subpart A of this part except as follows:

(a) "Party" means, for the purposes of this subpart:

(1) The Director or his representative;

(2) A person who has notified the Director by specified dates of his or her intent to participate in the hearing pursuant to §§ 216.74 and 216.83(b).

(b) "Witness" means, for the purposes of this subpart, any person who submits written direct testimony on the proposed regulations.

A person may be both a party and a witness.

§ 216.72 Scope of regulations.

The procedural regulations in this subpart govern the practice and procedure in hearings held under section 103(d) of the Act. These hearings will be governed by the provisions of 5 U.S.C. section 556 and section 557 of the Administrative Procedure Act. The regulations shall be construed to secure the just, speedy, and inexpensive determination of all issues raised with respect to any waiver or regulation proposed pursuant to section 103(d) of the Act with full protection for the rights of all persons affected thereby.

§ 216.73 Notice of hearing.

(a) A notice of hearing on any proposed regulations shall be published in the FEDERAL REGISTER, together with the Director's proposed determination to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A)), where applicable.

(b) The notice shall state:

(1) The nature of the hearing;

(2) The place and date of the hearing. The date shall not be less than 60 days after publication of notice of the hearing;

(3) The legal authority under which the hearing is to be held;

(4) The proposed regulations and waiver, where applicable, and a summary of the statements required by section 103(d) of the Act (16 U.S.C. 1373(d));

(5) Issues of fact which may be involved in the hearing;

(6) If a draft Environmental Impact Statement is required, the date of publication of the draft and the place(s) where the draft and comments thereon may be viewed and copied;

(7) Any written advice received from the Marine Mammal Commission;

(8) The place(s) where records and submitted direct testimony will be kept for public inspection;

(9) The final date for filing with the Director a notice of intent to participate in the hearing pursuant to § 216.74;

(10) The final date for submission of direct testimony on the proposed regulations and waiver, if applicable, and the number of copies required;

(11) The docket number assigned to the case which shall be used in all subsequent proceedings; and

(12) The place and date of the prehearing conference.

§ 216.74 Notification by interested persons.

Any person desiring to participate as a party shall notify the Director, by certified mail, on or before the date specified in the notice.

§ 216.75 Presiding officer.

(a) Upon publication of the notice of hearing pursuant to § 216.73, the Director shall appoint a presiding officer pursuant to 5 U.S.C. 3105. No individual who has any conflict of interest, financial or otherwise, shall serve as presiding officer in such proceeding.

(b) The presiding officer, in any proceeding under this subpart, shall have power to:

(1) Change the time and place of the hearing and adjourn the hearing:

(2) Evaluate direct testimony submitted pursuant to these regulations, make a preliminary determination of the issues, conduct a prehearing conference to determine the issues for the hearing agenda, and cause to be published in the FEDERAL REGISTER a final hearing agenda;

(3) Rule upon motions, requests and admissibility of direct testimony;

(4) Administer oaths and affirmations, question witnesses and direct witnesses to testify;

(5) Modify or waive any rule (after notice) when determining no party will be prejudiced;

(6) Receive written comments and hear oral arguments;

(7) Render a recommended decision; and

(8) Do all acts and take all measures, including regulation of media coverage, for the maintenance of order at and the efficient conduct of the proceeding.

(c) In case of the absence of the original presiding officer or his inability to act, the powers and duties to be performed by the original presiding officer under this part in connection with a proceeding may, without abatement of the proceeding, be assigned to any other presiding officer unless otherwise ordered by the Director.

(d) The presiding officer may upon his own motion withdraw as presiding officer in a proceeding if he deems himself to be disqualified.

(e) A presiding officer may be requested to withdraw at any time prior to the recommended decision. Upon the filing by an interested person in good faith of a timely and sufficient affidavit alleging the presiding officer's personal bias, malice, conflict of interest or other basis which might result in prejudice to a party, the hearing shall recess. The Director shall immediately determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 216.76 Direct testimony submitted as written documents.

(a) Unless otherwise specified, all direct testimony, including accompanying exhibits, must be submitted to the presiding officer in writing no later than the dates specified in the notice of the hearing (§ 216.73), the final hearing agenda (§ 216.81), or within 15 days after the conclusion of the prehearing conference (§ 216.83) as the case may be. All direct testimony shall be in affidavit form and exhibits constituting part of such testimony, referred to in the affidavit and made a part thereof, must be attached to the affidavit. Direct testimony submitted with exhibits must state the issue to which the exhibit relates; if no such statement is made, the presiding officer shall determine the relevance of the exhibit to the issues published in the FEDERAL REGISTER.

(b) The direct testimony submitted shall contain:

(1) A concise statement of the witness' interest in the proceeding and his position regarding the issues presented. If the direct testimony is presented by a witness who is not a party, the witness shall state his relationship to the party; and

(2) Facts that are relevant and material.

(c) The direct testimony may propose issues of fact not defined in the notice of the hearing and the reason(s) why such issues should be considered at the hearing.

(d) Ten copies of all direct testimony must be submitted unless the notice of the hearing otherwise specifies.

(e) Upon receipt, direct testimony shall be assigned a number and stamped with that number and the docket number.

(f) Contemporaneous with the publication of the notice of hearing, the Director's direct testimony in support of the proposed regulations and waiver, where applicable, shall be available for public inspection as specified in the notice of hearing. The Director may submit additional direct testimony during the time periods allowed for submission of such testimony by witnesses.

§ 216.77 Mailing address.

Unless otherwise specified in the notice of hearing, all direct testimony shall be addressed to the Presiding Officer, c/o Director, National Marine Fisheries Service, Washington, D.C. 20235. All affidavits and exhibits shall be clearly marked with the docket number of the proceedings.

§ 216.78 Inspection and copying of documents.

Any document in a file pertaining to any hearing authorized by this subpart or any document forming part of the record of such a hearing may be inspected and/or copied in the Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235—unless the file is in the care and custody of the presiding officer, in which case he shall notify the parties as to where and when the record may be inspected.

§ 216.79 Ex parte communications.

(a) After notice of a hearing is published in the FEDERAL REGISTER, all communications, whether oral or written, involving any substantive or procedural issue and directed either to the presiding officer or to the Director, Deputy Director or Marine Mammal Coordinator, National Marine Fisheries Service, without reference to these rules of procedure, shall be deemed ex parte communications and are not to be considered part of the record for decision.

(b) A record of oral conversations shall be made by the above persons who are contacted. All communications shall be available for public viewing at the place(s) specified in the notice of hearing.

(c) The presiding officer shall not consult any person or party on any fact in issue or on the merits of the matter unless notice and opportunity is given for all parties to participate.

§ 216.80 Prehearing conference.

(a) After an examination of all the direct testimony submitted pursuant to § 216.76, the presiding officer shall make a preliminary determination of issues of fact which may be addressed at the hearing.

(b) The presiding officer's preliminary determination shall be made available at the place or places provided in the notice of the hearing (§ 216.73(b)(8)) at least five days before the prehearing conference is held.

(c) The purpose of the prehearing conference shall be to enable the presiding officer to determine, on the basis of the direct testimony submitted and prehearing discussions:

(1) Whether the presiding officer's preliminary determination of issues of fact for the hearing has omitted any significant issues;

(2) What facts are not in dispute;

(3) Which witnesses may appear at the hearing; and

(4) The nature of the interest of each party and which parties' interests are adverse.

(d) Only parties may participate in the prehearing conference and a party may appear in person or be represented by counsel.

(e) Parties who do not appear at the prehearing conference shall be bound by the conference's determinations.

§ 216.81 Final agenda of the hearing.

(a) After the prehearing conference, the presiding officer shall prepare a final agenda which shall be published in the FEDERAL REGISTER within ten days after the conclusion of the conference. A copy of the final agenda shall be mailed to all parties.

(b) The final agenda shall list: (1) All the issues which the hearing shall address, the order in which those issues shall be presented, and the direct testimony submitted which bears on the issues; and (2) a final date for submission of direct testimony on issues of fact not included in the notice of hearing if such issues are presented. The final agenda may also specify a final date for submission of direct testimony to rebut testimony previously submitted during the time specified in the notice of the hearing.

(c) The presiding officer shall publish with the final agenda a list of witnesses who may appear at the hearing, a list of parties, the nature of the interest of each party, and which parties' interests are adverse on the issues presented.

§ 216.82 Determination to cancel the hearing.

(a) If the presiding officer concludes that no issues of fact are presented by the direct testimony submitted, the presiding officer shall publish such conclusion and notice in the FEDERAL REGISTER that a hearing shall not be held and shall also publish a date for filing written comments on the proposed regulations. Written comments may include proposed findings and conclusions, arguments or briefs.

(b) A person need not be a party to submit any written comments.

(c) Promptly after expiration of the period for receiving written comments, the presiding officer shall make a recommended decision based on the record, which in this case shall consist of the direct testimony and written comments submitted. He shall transfer to the Director his recommended decision, the record and a certificate stating that the record contains all the written direct testimony and comments submitted. The Director shall then make a final decision in accordance with these regulations (§ 216.90).

§ 216.83 Rebuttal testimony and new issues of fact in final agenda.

(a) Direct testimony to rebut testimony offered during the time period specified in the notice of hearing may be submitted pursuant to these regulations within fifteen days after the conclusion of the prehearing conference unless the presiding officer otherwise specifies in the final agenda.

(b) If the final agenda presents issues not included in the notice of the hearing published pursuant to § 216.73:

(1) Any person interested in participating at the hearing on such issues presented shall notify the Director by certified mail of an intent to participate not later than ten days after publication of the final agenda. Such person may present direct testimony or cross-examine witnesses only on such issues presented unless he previously notified the Director pursuant to § 216.74; and

(2) Additional written direct testimony concerning such issues may be submitted within the time provided in the final agenda. Such direct testimony will comply with the requirements of § 216.76.

§ 216.84 Waiver of right to participate.

Persons who fail to notify the Director pursuant to § 216.74 and § 216.83 shall be deemed to have waived their right to participate as parties in any part of the hearing.

§ 216.85 Conduct of the hearing.

(a) The hearing shall be held at the time and place fixed in the notice of hearing, unless the presiding officer changes the time or place. If a change occurs, the presiding officer shall publish the change in the FEDERAL REGISTER and shall expeditiously notify all parties by telephone or by mail: *Provided*, That if the change in time or place of hearing is made less than five days before the date previously fixed for the hearing, the presiding officer shall also announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) The presiding officer shall, at the commencement of the hearing, introduce into the record: the notice of hearing as published in the FEDERAL REGISTER; all subsequent notices published in the FEDERAL REGISTER; the draft Environmental Impact Statement if it is required and the comments thereon and agency responses to the comments; and a list of all parties. Direct testimony shall then be received with respect to the matters specified in the final agenda in such order as the presiding officer shall announce. With respect to direct testimony submitted as rebuttal testimony or in response to new issues presented by the prehearing conference, the presiding officer shall determine the relevancy of such testimony.

(c) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(d) If a party objects to the admission or rejection of any direct testimony or to any other ruling of the presiding officer during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The transcript shall not include argument or debate thereon except as ordered by the presiding officer. The ruling of the presiding officer on any objection shall be a part of the transcript and shall be subject to review at the same time and in the same manner as the Director's final decision. Only objections made before the presiding officer may subsequently be relied upon in the proceedings.

(e) All motions and requests shall be addressed to, and ruled on by, the presiding officer, if made prior to his certification of the transcript or by the Director if made thereafter.

§ 216.86 Direct testimony.

(a) Only direct testimony submitted by affidavit as provided in these regulations and introduced at the hearing by a witness shall be considered part of the record. Such direct testimony shall not be be read into evidence but shall become a part of the record subject to exclusion of irrelevant and immaterial parts thereof;

(b) The witness introducing direct testimony shall:

(1) State his name, address and occupation;

(2) State qualifications for introducing the direct testimony. If an expert, the witness shall briefly state the scientific or technical training which qualifies him as an expert;

(3) Identify the direct testimony previously submitted in accordance with these regulations; and

(4) Submit to appropriate cross and direct examination. Cross-examination shall be by a party whose interests are adverse on the issue presented, to the witness', if the witness is a party, or to the interests of the party who presented the witness.

(c) A party shall be deemed to have waived the right to introduce direct testimony if such party fails to present a witness to introduce the direct testimony.

(d) Official notice may be taken of such matters as are judicially noticed by the courts of the United States: *Provided*, That parties shall be given adequate notice, by the presiding officer, at the hearing, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

§ 216.87 Cross-examination.

(a) The presiding officer may:

(1) Require the cross-examiner to outline the intended scope of the cross-examination;

(2) Prohibit parties from cross-examining witnesses unless the presiding officer has determined that the cross-examiner has an adverse interest on the facts at issue to the party-witness or the party presenting the witness. For the purposes of this subsection, the Director's or his representative's interest shall be considered adverse to all parties;

(3) Limit the number of times any party or parties having a common interest may cross-examine an "adverse" witness on the same matter; and

(4) Exclude cross-examination questions that are immaterial, irrelevant or unduly repetitious.

(b) Any party shall be given an opportunity to appear, either in person or through an authorized counsel or representative, to cross-examine witnesses. Before cross-examining a witness, the party or counsel shall state his name, address and occupation. If counsel cross-examines the witness, counsel shall state for the record the authority to act as counsel. Cross-examiners shall be assumed to be familiar with the direct testimony.

(c) Any party or party's counsel who fails to appear at the hearing to cross-examine an "adverse" witness shall be deemed to have waived the right to cross-examine that witness.

(d) Scientific, technical or commercial publications may only be utilized for the limited purposes of impeaching witnesses under cross-examination unless previously submitted and introduced in accordance with these regulations.

§ 216.88 Oral and written arguments.

(a) The presiding officer may, in his discretion, provide for oral argument at the end of the hearing. Such argument when permitted, may be limited by the presiding officer to the extent necessary for the expeditious disposition of the proceeding.

(b) The presiding officer shall announce at the hearing a reasonable period of time within which any interested person may file with the presiding officer any written comments on the proposed regulations and waiver, including proposed findings and conclusions and written arguments or briefs, which are based upon the record and citing where practicable the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by such party to a ruling of the presiding officer, he shall specifically identify such rulings by reference to the pertinent pages of the transcript and shall state his arguments thereon as a part of the brief.

(c) Oral or written arguments shall be limited to issues arising from direct testimony on the record.

§ 216.89 Recommended decision, certification of the transcript and submission of comments on the recommended decision.

(a) Promptly after expiration of the period for receiving written briefs, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Director. The recommended decision shall include:

(1) A statement containing a description of the history of the proceedings;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(b) The presiding officer shall also transmit to the Director the transcript of the hearing, the original and all copies of the direct testimony, and written comments. The presiding officer shall attach to the original transcript of the hearing a certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as are specified.

(c) Immediately after receipt of the recommended decision, the Director shall give notice thereof in the FEDERAL REGISTER, send copies of the recommended decision to all parties, and provide opportunity for the submission of comments. The recommended decision may be reviewed and/or copied in the office of the Director, National Marine Fisheries Service, Washington, D.C. 20235.

(d) Within twenty days after the notice of receipt of the recommended decision has been published in the FEDERAL REGISTER, any interested person may file with the Director any written comments on the recommended decision. All comments, including recommendations from or consultation with the Marine Mammal Commission, must be submitted during the twenty-day period to the Director at the above address.

§ 216.90 Director's decision.

(a) Upon receipt of the recommended decision and transcript and after the twenty-day period for receiving written comments on the recommended decision has passed, the Director shall make a final decision on the proposed regulations and waiver, where applicable. The Director's decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions and decision of the presiding officer. The Director may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Director's decision shall include:

(1) A statement containing a description of the history of the proceeding;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(c) The Director's decision shall be published in the FEDERAL REGISTER. If the waiver is approved, the final adopted regulations shall be promulgated with the decision.

Subpart H—Approval and Review of State Laws and Regulations

SOURCE: 41 FR 36659, Aug. 31, 1976, unless otherwise noted.

§ 216.101 Purpose of regulations.

(a) Section 109 of the Act provides that no State may adopt or enforce any law or regulation which relates to the taking of marine mammals unless such laws and regulations have been previously reviewed by the Director and determined by him to be consistent with the Act.

(b) This subpart fulfills the requirements of sections 109 and 112 of the Act by prescribing procedures to permit a State to adopt and enforce laws and regulations consistent with the Act which relate to the protection and taking of marine mammals.

§ 216.102 Scope.

(a) The provisions of § 216.103 of this subpart apply whenever a State has requested a determination from the Director, pursuant to section 109(a)(2) of the Act, that the State's proposed or existing laws or regulations relating to the protection and taking of any marine mammal are consistent with the Act and regulations contained in this part, regardless of whether the moratorium imposed by section 101 of the Act must be waived to allow such laws to take effect. The provisions set forth standards and criteria for such determination by the Director.

(b) The provisions of §§ 216.104 through 216.108 of this subpart apply only when both the Director has waived or is considering waiving the moratorium, and when a State has requested a determination from the Director, pursuant to section 109(a)(2) of the Act, that the State's laws and regulations relating to the protection and taking of any species or population stock of marine mammals are consistent with the waiver of the moratorium, the Act, and the regulations in this part which apply to such species or population stocks. The provisions set forth standards and criteria for such determination by the Director and for waiving the moratorium.

§ 216.103 Review of State laws and regulations—general.

(a) Nothing in this part, nor any permit issued under authority of this part, shall be construed to relieve a person from any other requirements imposed by any statute or regulation of the United States, including any applicable statutes or regulations relating to wildlife and fisheries, health, quarantine, agriculture, or customs.

(b) Section 109 of the Act provides that on or after December 21, 1972, no State may adopt any law or regulation, or enforce any existing law or regulation, which relates to the taking of marine mammals or which in effect nullifies an exemption or exception created by the Act, unless such laws or regulations have been previously reviewed by the Director and determined by him to be consistent with the provisions of the Act and the regulations in this part. In no event, however, will the Director approve any State laws or regulations which:

(1) Purport to authorize a State to issue permits in situations which would require a Federal permit under the Act, unless and until appropriate Federal regulations have been issued under section 103 of the Act, and where appropriate, the Director has waived the moratorium on such taking or importation under section 101(a)(3)(A) of the Act; or

(2) Purport to authorize a State to issue permits for scientific research or public display (except that a State may, under authority of a general scientific research permit granted by the Director, assign individual scientific research permits to State employees or representatives of State universities or other State agencies, subject to the provisions of the general permit).

(c) Any State may obtain a review and determination of its proposed or existing laws and regulations from the Director by submitting a written request to that effect to the Director, National Marine Fisheries Service (NMFS), accompanied by the following documents, unless otherwise specified by the Director.

(1) A complete set of the laws and regulations to be reviewed, certified as complete, true and correct, by the appropriate State official;

(2) A scientific description by species and population stock of the marine mammals to be subjected to such laws and regulations;

(3) A description of the organization, staffing and funding for the administration and enforcement of the laws and regulations to be reviewed;

(4) A description of the procedures to be used in granting or withholding such permits and otherwise enforcing such laws, where such laws and regulations provide for discretionary authority on the part of State officials to issue permits; and

(5) Such other materials and information as the Director may request or which the State may deem necessary or advisable to demonstrate the compatibility of such laws and regulations with the policy and purposes of the Act and the rules and regulations issued thereunder.

(d) In making a determination with respect to any State laws and regulations, the Director shall take into account:

(1) Whether such laws and regulations are consistent with the purposes and policies of the Act and the rules and regulations issued thereunder;

(2) The extent to which such laws and regulations are consistent with, or constitute an integrated management or protection program with, the laws and regulations of other jurisdictions

whose activities may affect the same species or stocks of marine mammals; and

(3) The existence of, or preparations for, an overall State program regarding the protection and management of marine mammals to which the laws and regulations under review relate.

(e) To assist States in preparing laws and regulations relating to marine mammals, the Director will also, at the written request of any State, make a preliminary review of any proposed laws or regulations. This review will be advisory in nature and shall not be binding upon the Director. Notwithstanding preliminary review by the Director, once these proposed laws and regulations have been prepared in final form, they shall be subject to a final review under paragraphs (b) through (d) of this section. To be considered for preliminary review, a State shall submit the same documents as required in paragraph (c) of this section, unless otherwise specified by the Director.

(f) The implementation and enforcement of all States laws and regulations previously approved by the Director pursuant to this section shall be subject to continuous monitoring and review by the Director pursuant to such rules and regulations as he may adopt. Any modifications, amendments, deletions or additions to laws or regulations previously approved shall be deemed to be new laws and regulations for the purposes of these regulations and shall require review and approval by the Director before their adoption, except as provided in § 216.104.

(g) Nothing in this part shall prevent (1) the taking of a marine mammal by a State or local government official pursuant to § 216.22 of the regulations in this part, or (2) the adoption or enforcement of any law or regulation relating to any marine mammal taken or imported prior to the effective date of the Act.

§ 216.104 Review of State laws and regulations implementing waiver.

(a) Any State which requests a determination that its laws and regulations are consistent with the Act and applicable regulations in accordance with § 216.103(c) of this subpart, may also request a waiver of the moratorium imposed by section 101 of the Act to the extent necessary to allow such laws and regulations to take effect.

(b) If the Director, after opportunity for agency hearing as required by section 103(d) of the Act, decides to waive the moratorium so as to allow State laws and regulations to take effect, the waiver shall be contingent upon his approval of such State laws and regulations under paragraph (c) of this section and shall not be effective until publication of the notice specified in paragraph (d) of this section.

(c) The Director may approve State laws and regulations which implement a waiver of the moratorium if he determines them to be consistent with the Act, with regulations promulgated under section 103 of the Act, with the criteria of § 216.105 of this part and with all other rules or regulations promulgated pursuant to the Act with respect to marine mammals.

(d) Upon approval of such State laws and regulations, the Director shall publish his decision in the FEDERAL REGISTER. The decision will summarize the management program established by the State laws and regulations, state the extent to which the moratorium is waived in order to allow such State laws and regulations to take effect, and indicate the date the State's annual report is to be submitted.

(e) Any modifications, amendments, deletions, or additions to laws or regulations previously approved, except emergency closing of seasons, shall require review and approval by the Director pursuant to paragraphs (c) through (g) of § 216.106 of these regulations before their adoption.

(f) All determinations by the Director shall be final.

§ 216.105 Approval of State laws and regulations—criteria.

Any State which applies to the Director for approval of its laws and regulations under § 216.104 must demonstrate to the Director's satisfaction, that such laws and regulations:

(a) Provide for a modern scientific resource management program, including, but not limited to, research, census, law enforcement, habitat acquisition and improvement and, when and where appropriate, the periodic or permanent protection of the species of marine mammals affected by the State's application;

(b) Establish a program which is based upon the best scientific evidence available on the relevant marine ecosystem and the role of the affected species of marine mammals in that ecosystem;

(c) Establish a program which is consistent with the primary goal of the Act, to maintain the health and stability of the marine ecosystem;

(d) Establish a program which insures that the affected species or population stock of marine mammals shall not diminish below the range of optimum sustainable population;

(e) Require cessation of taking of the affected species of marine mammals whenever the population is determined to be below the range of optimum sustainable population;

(f) Provide appropriate maximum quotas and seasons, whenever a taking is proposed, unless the State can show that it is more consistent with these criteria to have no quota or season;

(g) Establish quotas, seasons, and other allowances and restrictions as necessary to be consistent with the criteria of this section and in accordance with the following factors:

(1) The seasonal distribution of populations;

(2) Segregation within populations by sex and age;

(3) Discreteness of populations;

(4) Population density;

(5) Critical periods in the species life cycle;

(6) Critical habitat areas;

(7) Productivity of the population;

(8) Species interactions;

(9) Percentage of retrieval by hunters;

(10) Maximization of the utilization of the species;

(11) Other uses of the species, such as recreational use or incidental catch; and

(12) Enforceability of the limitations.

(h) Contain suitable limitations on the means and methods of taking which assure that taking will be by humane means and will maximize the utilization of each animal taken.

(i) Contain provisions for significant public participation within the State in the process of implementing the waiver.

(j) Meet the criteria specified in § 216.103 of this part, to the extent such criteria may differ from those prescribed in this section.

§ 216.106 Review of approved State laws and regulations.

(a) All State laws and regulations and the conservation programs established thereby which have been approved shall be reviewed annually, unless circumstances indicate that an earlier review is appropriate.

(b) In order to facilitate such a review, each State having approved laws and regulations must submit an annual report not later than 60 days after the close of such State's first full fiscal year following the effective date of the waiver of the moratorium and at the same time each following year. The report shall contain the following information current for each reporting period:

(1) Any changes in the State laws or regulations;

(2) Any new data on the marine mammal stocks or the marine ecosystems in question;

(3) All available information relating to harvests under the terms of a waiver;

(4) A summary of all research activity on the stocks or ecosystem affected by a waiver;

(5) Any changes in the information provided with the original request for approval;

(6) A summary of all enforcement activity, including permits issued, skins sealed, reports under permits, investigations undertaken and their dispositions;

(7) Present budget and staffing level for the marine mammal activities; and

(8) Any other information which the Director may request, or which the State deems necessary or advisable.

(c) Each State having approved laws and regulations shall file a special report within 30 days, whenever any of the following occurs:

(1) A proposed change in a relevant State law or regulation, (amendments, repealers, or new legislation or regulations), which, with the exception of emergency closing of seasons, shall not be effective until the Director makes a determination pursuant to paragraphs (e) through (g) of this section; or

(2) A significant natural or man-made occurrence affecting the marine ecosystem or the stocks of marine mammals; or

(3) A significant violation of the State management program including any quotas established thereby.

(d) All State laws and regulations and the conservation programs established thereby, as well as annual reports submitted under paragraph (b) and special reports submitted under paragraph (c) of this section, shall be available for inspection and copying at the Office of the Director, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C. 20235.

(e) Upon receipt of any report described in paragraphs (b) and (c) of this section, the Director shall, as soon as practicable, in consultation with the Marine Mammal Commission, determine preliminarily whether or not the State laws and regulations and any programs established thereby comply with the requirements of the Act and this subpart.

(f) Whenever the Director preliminarily determines, in consultation with the Marine Mammal Commission, that any State laws, regulations or programs established thereby are or are not in compliance with the requirements of this subpart, he shall publish notice of such preliminary determination in the FEDERAL REGISTER, inviting submission from interested persons, within 30 days of the notice, of written data, views, comments, or requests for hearings with respect to such preliminary determination.

(g) As soon as practicable after the 30-day comment period described in § 216.106(f), the Director, in consultation with the Marine Mammal Commission, shall determine whether to finally approve or disapprove the State laws and regulations. The Director's determination shall be made within 90 days after publication of the notice described in § 216.106(f), unless a hearing is held.

(h) If the Director makes a final determination to disapprove proposed changes in State laws and regulations, the State shall have the option of retaining its initially approved laws and regulations, in which case any waiver shall remain in effect. All final determinations of approval or disapproval shall be published in the FEDERAL REGISTER; upon publication of disapproval, unless a State elects within 30 days to retain its originally approved laws and regulations, any waiver conditioned upon approval of State laws and regulations as provided in this subpart shall terminate, and all provisions of the Act shall be reinstated and supersede such State laws and regulations.

§ 216.107 Notification.

The State shall immediately notify the Director when the mortality due to retrieved and unretrieved harvest for any species or population stock of marine mammal reaches 90 percent of the numerical extent of the waiver prescribed by subpart I of this part for that species or population stock. The Director shall publish a Notice of Receipt in the FEDERAL REGISTER concerning such notification as soon after receipt as practicable.

[41 FR 36659, Aug. 31, 1976; 42 FR 3845, Jan. 21, 1977]

§ 216.108 Enforcement.

The appropriate official in each State shall utilize such methods as he deems appropriate to assure to the maximum extent practicable that the quotas, seasons, and other limitations in approved State laws and regulations are not exceeded. These methods may include, but are not limited to, patrols, surveillance, investigation, permit recordkeeping and reporting requirements, and tagging and marking requirements.

Subpart I—Waiver of the Moratorium on Taking of Marine Mammals

AUTHORITY: Secs. 103 and 109 of the Marine Mannal Protection Act of 1972, as amended, (16 U.S.C. 1373 and 1379).

SOURCE: 44 FR 2553, Jan. 11, 1979, unless otherwise noted.

EFFECTIVE DATE NOTE: At 44 FR 2553, Jan. 11, 1979, Subpart I to Part 216 was added, effective when the Administrator determines (in accordance with section 109(a)(2) of the Marine Mammal Protection Act of 1972, and 50 CFR Part 216, Subpart H) that Alaskan laws and regulations are consistent with the Act.

§ 216.110 Purpose of regulations.

Pursuant to section 103 of the Act, the regulations contained in this subpart insure that the taking of each species or population stock of marine mammal for which the moratorium imposed by section 101 of the Act has been waived will not be to the disadvantage of any species or population stock.

§ 216.111 Scope.

(a) The provisions of this subpart apply with respect to each species or population stock only after (1) the Administrator has made a decision to effect a waiver and allow taking such species or population stocks pursuant to section 101(a)(3)(A) of the Act; and (2) a State has adopted and submitted to the Administrator laws and regulations relating to the protection and taking of such species and population stocks and the Administrator has approved such State laws and regulations pursuant to section 109(a)(2) of the Act and Subpart H of this part.

(b) The provisions of this subpart, unless specifically stated otherwise, apply to all taking of marine mammals by U.S. citizens and residents in Alaska and the waters off Alaska.

(c) The provisions of this subpart do not apply to nonlethal scientific research or public display, which shall be permitted in accordance with § 216.31, and incidental taking by foreign persons or foreign vessels, which shall be permitted in accordance with § 216.24.

§ 216.112 Definitions.

For purposes of this part:

(a) "Alaska" means all lands and waters within the seaward boundary of the State of Alaska;

(b) "Foreign person" means any person who is not a U.S. citizen or resident; "foreign vessel" means any vessel other than a vessel documented or certificated under U.S. laws.

(c) "Lethal scientific research" means scientific research in which the subject mammal is killed or seriously injured.

(d) "Pup" refers to a marine mammal which is born in the year in which it is taken in a commercial harvest.

(e) The term "Waters off Alaska" means waters outside Alaska and west of longitude 130° W., north of latitude 50° N., east of the U.S.-Russia Convention Line of 1867, and south of latitude 75° N.

§ 216.113 Taking of seals, sea lions and Beluga Whales (Alaska).

(a) Pursuant to section 101(a)(3)(A), 103 and 109 of the Act, and subject to the terms and conditions of this section, the moratorium and other requirements of section 101(a) of the Act are waived to allow the kinds of taking described in § 216.111(b) up to the following amounts on an annual, calendar year basis effective with the publication of the notice of approval of the laws and regulations of the State of Alaska pursuant to § 216.104(d).

Species	Annual taking limit on mortality and serious injury
Northern (Steller), Sea Lion (*Eumetopias jubatus*)	[1] 6,648
Harbor Seal (*Phoca vitulina*)	[1] 10,511
Largha Seal (*Phoca largha*)	5,700
Ribbon Seal (*Histriophoca vasciata*)	500
Ringed Seal (*Pusa hispida*)	20,000
Pacific Bearded Seal (*Enignatha barbatus*)	[2] 9,000
Beluga Whale (*Delphinapterus leucas*)	10
Cook Inlet stock, Bering-Chukchi Sea stock	350

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[1] Two (2) pups may be taken in lieu of one adult, but only in commercial harvests and in accordance with age restrictions established by the State of Alaska. In accordance with 50 CFR 216.112(d), the State can allow only animals born in the year in which they are taken to qualify as pups.

[2] To be measured by the landing and taking ashore of 3,000 animals.

(b) The State of Alaska must insure that for each species and population stock, no more than the number of animals set forth in paragraph (a) of this section are taken annually.

(c) All takings of marine mammals allowed by §§ 216.111(b) and 216.113(a) and all related activities shall be conducted in accordance with the applicable laws and regulations of the State of Alaska and the United States.

(d) The takings of marine mammals allowed by §§ 216.111(b) and 216.113(a) shall be duly licensed or otherwise authorized in writing as follows:

(1) *Alaska citizens and residents (including resident aliens).* All subsistence, direct, incidental, and lethal scientific research taking in Alaska and the waters of Alaska shall be permitted in accordance with laws and regulations established by the State of Alaska;

(2) *Non-Alaskan-U.S. citizens, residents, and resident aliens.* (i) All direct and incidental taking, and lethal scientific research in Alaska shall be permitted in accordance with laws and regulations established by the State of Alaska; (ii) if such takings occur in the waters off Alaska, they shall be permitted in accordance with the laws and regulations of the United States.

(3) With respect to all permit applications for taking in the waters off Alaska under paragraph (d)(2)(ii) of this section, the Assistant Administrator for Fisheries, NOAA, shall consult with appropriate officials of the State of Alaska prior to issuing any permits.

(4) The State of Alaska shall consult with the Assistant Administrator for Fisheries, NOAA, prior to issuing any lethal scientific research permits under paragraphs (d)(1) and (d)(2) of this section.

(e) Whenever the taking of any species or population stock during any calendar year reaches, or is likely to reach 90 percent of the annual taking limit under paragraph (a) of this section, the Administrator shall be notified pursuant to § 216.107. After notification, the State of Alaska must take appropriate steps to insure that the annual waiver limit is not exceeded, including, if necessary, an immediate termination of any taking under its control. If the State of Alaska does not take such appropriate steps, the Administrator as he deems appropriate, by notice to the State of Alaska and publication in the FEDERAL REGISTER, shall suspend and terminate any takings authorized by the State of Alaska for the calendar year in question.

(f) Whenever any species or population stock diminishes or is likely to diminish below its optimum sustainable population, or if the State of Alaska does not preserve the purposes and policies of the Act, or maintain optimum sustainable population and a healthy ecosystem, the Administrator shall by notice to the State of Alaska and publication in the FEDERAL REGISTER reimpose the moratorium on the taking of such affected species or population stock provided by section 101(a) of the Act.

(g) No marine mammal or product thereof taken under this section may be removed from Alaska or the waters off Alaska unless it is marked, tagged, or otherwise identified as required by State law or regulation and such mark, tag, or other identification remains on the part or product or container until the final stages of processing.

(h) For those persons or vessels subject to Alaskan jurisdiction, any violation of the laws and regulation of the State of Alaska applicable to the taking of marine mammals, committed in the waters off Alaska, shall be a violation of 50 CFR Part 216, Subpart I. For those persons or vessels not subject to the jurisdiction of the State, any violation of these regulations in Alaska and the waters off Alaska may be punished in accordance with the procedures and penalties of sections 105, 106, and 107 of the Act and the regulations in this part.

(i) In accordance with paragraph (d)(2)(ii) of this section, the Administrator, after consultation with the State of Alaska, may issue permits to non-Alaskan, U.S. citizens authorizing the taking of any marine mammal listed in this section in the waters off Alaska. Applications for permits shall include:

(1) Name and address of applicant;

(2) Month and year of taking;

(3) Identity of the marine mammal and the quantity to be taken;

(4) Proposed location of taking;

(5) Method of taking;

(6) Proposed disposition of parts and products and method of shipment;

(7) The following certification:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefits of a permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001 or to penalties under the Marine Mammal Protection Act of 1972; and

(8) Signature of the applicant;

(j) Permits applied for under paragraph (i) of this section shall be terminated by reimposition of the moratorium or any closure of a season by the State of Alaska.

(k) Permits issued under paragraph (i) of this section shall contain such terms and conditions as the Administrator may deem appropriate to ensure that any taking and subsequent disposition shall be in accordance with the Act, with these regulations, and with the applicable provisions of Alaska's approved laws and regulations and shall include:

(1) The number of animals which are authorized to be taken;

(2) The location from which they may be taken;

(3) The method of taking;

(4) The period during which the permit is valid, which period shall be subject to reimposition of the moratorium, or any closure of a season by the State of Alaska;

(5) Any requirements for reports or rights of inspection with respect to any activities carried out pursuant to the permit;

(6) The conditions of sale or other disposition of any parts or products including any marking requirements; and

(7) A reasonable fee covering the cost of issuance of such permit, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce. In no event will the cost be less than the fee for the comparable non-resident license or permit issued by the State of Alaska.

APPENDIX—TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATION; EXPEDITED PROCEDURES FOR CONSIDERATION OF PROPOSED QUOTAS AND AMENDED REGULATIONS

1. Basis and purpose. (a) Sections 101(a)(2) and 103(e) of the Marine Mammal Protection Act, 16 U.S.C. 1317(a)(2) and 1373(e), and these regulations authorize the Director, National Marine Fisheries Service, to amend regulations governing the taking of marine mammals incidental to commercial fishing operations. In amending regulations, the Act refers the Director to Section 103(e) (16 U.S.C. 1373(e)).

(b) The purpose of these regulations is to establish rules of practice and procedure for proceedings commenced under Section 103(e) on or about August 1, 1977 concerning the amendment of regulations and quotas on the taking of marine mammals incidental to commercial fishing operations.

2. Definitions. Definitions shall be the same as in 50 CFR 216.3 except as follows:

(a) "Party" means for purposes of these regulations:

(1) The Director or his representative;

(2) The Marine Mammal Commission or its representative;

(3) A person who has, pursuant to paragraph 5, notified the Director by the final date specified in the notice of hearing of his or her intent to participate in the hearing.

(b) (1) "Witness" means, for the purposes of these regulations, any expert or other person who delivers testimonial evidence, or who identifies real or documentary evidence under paragraphs 11 (d) and (e). A person may be both a party and a witness.

(2) "Expert" means one possessing knowledge not acquired by ordinary persons, with reference to a particular subject.

(c) "Director" means, for the purposes of these regulations, the Director of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

3. Scope of regulations. These procedural regulations govern the practice and procedure in hearings described in paragraph 1(b). These hearings will be governed by the provisions of 5 U.S.C. 556 and 557 of the Administrative Procedure Act. They shall be construed to secure the just, speedy, and inexpensive determination of all issues raised with respect to amending the regulations governing the taking of marine mammals incidental to commercial fishing operations pursuant to section 103(e) of the Act, with full protection for the rights of all persons affected thereby.

4. Notice of hearing. (a) A notice of hearing on any proposed regulations on the taking of marine mammals incidental to commercial fishing operations shall be published in the FEDERAL REGISTER.

(b) The notice shall state:

(1) The Director's intention to amend regulations on the taking of marine mammals incidental to commercial fishing operations under section 103(e) of the Act;

(2) The nature of the hearing;

(3) The place and date of the hearing. The date shall not be less than thirty (30) days after publication of notice of the hearing;

(4) The legal authority under which the hearing will be held;

(5) The proposed regulations;

(6) A summary of the statements and studies described in section 103(d) (1)-(4) of the Act. The notice shall indicate that these statements and studies have been published in full and made available to the public, and shall set forth the ways in which individual persons may have copies of these statements and studies placed at their disposal;

(7) Issues of fact which may be involved in the hearing, together with the express statement that the hearing will not necessarily be limited to these issues and that evidence relevant to other issues may be submitted at the hearing, subject to rulings of the presiding officer on the materiality of such issues;

(8) The date of publication of any draft Environmental Impact Statement, and the place(s) where the draft and comments thereon may be viewed and copied;

(9) Any written advice received from the Marine Mammal Commission;

(10) The place(s) where records and documents submitted prior to the hearing will be kept for public inspection;

(11) A list of employees of the United States who will or may reasonably be expected to be involved in the decisional process on the regulations, including the Director and Deputy Director, to whom and by whom ex parte communications relevant to the merits of the proceeding by or to parties to the proceeding are prohibited under the provisions of section 4 of the Government in the Sunshine Act of 1976, Pub. L. 94-409;

(12) The final date for filing with the Director a notice of intent to participate in the hearing pursuant to paragraph 5;

(13) The docket number assigned to the case which shall be used in all subsequent proceedings;

(14) The name of the presiding officer;

(15) The final date for submission of direct expert testimony.

5. Notification by interested persons. Any person desiring to participate as a party shall notify the Director by certified mail on or before the date specified in the notice. Persons who fail to notify the Director shall be deemed to have waived their right to participate as parties in any part of the proceeding.

6. Presiding officer. (a) Upon publication of the notice of hearing pursuant to paragraph 4, the Director shall appoint a presiding officer pursuant to 5 U.S.C. 3105. No individual who has any conflict of interest, financial or otherwise, shall serve as presiding officer in such proceeding.

(b) The presiding officer, in any proceeding under this subpart, shall have power to:

(1) Adjourn the hearing, but not to change the time and place of the hearing specified in the notice of hearing without the consent of all parties;

(2) Rule upon motions, requests, and admissibility of real documentary, and testimonial evidence;

(3) Administer oaths and affirmations, question witnesses, and direct witnesses to testify;

(4) Modify or waive any rule with consent of all parties;

(5) Receive written arguments, comments, and briefs and hear oral argument;

(6) Render a recommended decision and certify the record of the proceeding to the Director;

(7) Do all acts and take all measures, including regulation of media coverage, for the maintenance of order at and the efficient conduct of the proceeding.

(c) In case of the absence of the original presiding officer or his inability to act, the power and duties to be performed by the original presiding officer under this part in connection with a proceeding may, without abatement of the proceeding, be assigned to any other presiding officer as ordered by the Director.

(d) The presiding officer may upon his own motion withdraw as presiding officer in a proceeding if he deems himself to be disqualified.

(e) A presiding officer may be requested to withdraw at any time by a party prior to the recommended decision. Upon the filing in good faith of a timely and sufficient affidavit alleging the presiding officer's personal bias, malice, conflict of interest of other basis which might result in prejudice to a party, the hearing shall recess. The Director shall immediately determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both as he may deem appropriate.

7. Submission of evidence before the start of the hearing. (a) All direct testimony of experts, including accompanying exhibits, must be submitted to the presiding officer and all parties in writing no later than the date specified in the notice of the hearing (section 4). Such testimony need not be in affidavit form. Direct testimony by other witnesses and real and documentary evi-

dence is encouraged, but is not required to be submitted before the start of the hearing.

(b) The direct testimony submitted shall contain:

(1) A concise statement of the witness' interest in the proceeding and his position regarding the issues presented. If the direct testimony is presented by a witness who is not a party, the witness shall state his relationship to the party;

(2) Facts that are relevant and material.

(c) Seven copies of all direct expert testimony must be submitted to the National Marine Fisheries at the address listed in Section 8.

(d) No objections or motions concerning the relevance of evidence submitted prior to the hearing or the materiality of the issue to which it relates shall be entertained by the presiding officer before such evidence is introduced into the record at the hearing.

8. Mailing address. Unless otherwise specified in the notice of hearing, all evidence shall be addressed to the Presiding officer, c/o Director, National Marine Fisheries Service, Washington, D.C. 20235. Each item of real and documentary evidence and all written direct testimony shall be clearly marked with the docket number of the proceedings.

9. Inspection and copying of evidence and other documents forming part of the record of the hearing. Any evidence submitted by the parties at any point in a proceeding under these regulations may be inspected and, to the extent feasible, copied at such times and places as the presiding officer may designate. Other documents forming part of the record of the proceeding shall be made available for inspection and copying on the same basis. Any such documents not in the custody of the presiding officer may be inspected and copied in Room 408, National Marine Fisheries Service, Page Building No. 2, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

10. Ex parte communications. The provisions of section 4 of the Government in the Sunshine Act of 1976, Pub. L. 94-409, shall be adhered to in any proceeding conducted under these regulations.

11. Conduct of the hearing. (a) The hearing shall be held at the time and place fixed in the notice of hearing, unless the presiding officer, with the consent of all parties, changes the time or place. If a change occurs, the presiding officer shall publish the change in the FEDERAL REGISTER and shall expeditiously notify all parties by telephone or by mail: But if the change in time or place of hearing is made less than five days before the date previously fixed for the hearing, the presiding officer shall also announce or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) At the commencement of the hearing, the presiding officer shall introduce into the record:

(1) The notice of hearing and the proposed regulations as published in the FEDERAL REGISTER;

(2) All subsequent notices pertaining to the proceeding published in the FEDERAL REGISTER;

(3) The draft Environmental Impact Statement, the comments thereon, and agency responses to the comments. If additional comments and agency responses are made at any later point in the proceeding, they shall be introduced into the record after notice to all parties by the presiding officer until he certifies the record to the Director, and thereafter by the Director;

(4) A list of all parties;

(c) Each party shall have the opportunity to introduce evidence into the record at the hearing in the order determined by the presiding officer, but the Director shall introduce his evidence before any other party.

(d) (1) Testimonial evidence of experts shall be presented through their written statements after such experts are placed under oath. Such direct testimony shall not be read into evidence but shall become a part of the record subject to exclusion of irrelevant and immaterial parts thereof. The presiding officer in his discretion, may allow a limited period for oral statements on direct evidence to explain parts of an expert's written statement or to discuss matters not mentioned in such statement.

(2) Testimonial evidence of lay witnesses may be presented either by written or oral statements. The presiding officer may, in his discretion, limit the length of such testimony.

(3) The presiding officer may directly examine a witness under oath, and may propound to the witness questions submitted by parties other than the party that called the witness which he determines to be suitable for direct examination.

(e) Real and documentary evidence shall be admitted into the record only if the party introducing it or another person called by the party as a witness identifies such evidence, the issue to which it relates, the introducing party's position regarding that issue, and the manner in which the evidence supports that position. This identification shall be made under oath, and shall be required whether or not such real or documentary evidence was submitted to the presiding officer prior to the hearing under paragraph 7.

(f) Any witness by whom a party introduces testimonial evidence or identifies real or documentary evidence shall:

(1) State his or her name, address, and occupation;

(2) State qualifications for delivering or identifying such evidence. If an expert, the witness shall briefly state the scientific or technical training by which he or she qualifies as an expert;

(3) Submit to appropriate cross-examination in accordance with paragraph (g).

(g) Each party shall have the opportunity, in the order determined by the presiding officer, to cross-examine any witness by whom another party has introduced testimonial evidence; and to cross-examine any other party, as well as any identifying witness, about real and documentary evidence which such other party has introduced. Such cross-examination may be conducted by a party either in person or by an authorized counsel or representative. Cross-examiners shall be assumed to be familiar with all testimony previously delivered by the witness at the hearing. The Presiding Officer may:

(1) Require the cross-examiner to outline the intended scope of the cross-examination;

(2) Limit the number of times any party or parties may cross-examine a party or other witness on the same matter;

(3) Exclude cross-examination questions that are irrelevant, concern immaterial issues, or are unduly repetitious.

(h) Scientific, technical, or commercial publications may only be used for impeaching witnesses under cross-examination unless previously introduced as evidence in accordance with these regulations.

(i) The first time counsel conducts the direct or cross-examination of a party or other witness, such counsel shall state for the record his or her authority to act as counsel and the party granting that authority. A party shall be assumed to have waived the right to introduce evidence if such party fails to produce a witness to present or identify such evidence under oath. Any party or party's counsel who fails to appear at the hearing to cross-examine a witness shall be assumed to have waived the right to cross-examine that witness.

(j) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(k) If a party objects to the admission or rejection of any evidence or to any other ruling of the presiding officer during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The ruling of the presiding officer on any objection shall be part of the record and shall be subject to review at the same time and in the same manner as the Director's final decision. Only objections made before the presiding officer may subsequently be relied upon in the proceedings.

(l) All motions and requests shall be addressed to, and ruled on by, the presiding officer if made before his certification of the record, and by the Director if made thereafter.

12. Admissible evidence; official notice. (a) Any evidence introduced by a party in accordance with these regulations shall be admitted into the record unless the presiding officer determines that such evidence is irrelevant to any material issue in the proceeding, or that it is unduly repetitious.

(b) Official notice may be taken of such matters as are judicially noticed by the courts of the United States.

13. Oral and written arguments. (a) For a period of fifteen (15) days after the close of presentation of evidence, any party may file with the presiding officer any written comments on the proposed regulations, including proposed finding and conclusions and written arguments or briefs which are based on the record and which cite, if practicable, the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by the presiding officer, that party shall state its arguments thereon as part of the brief. Immediately thereafter, each party shall be allowed five (5) days to file with the presiding officer reply briefs.

(b) The presiding officer shall provide for oral argument immediately following the period allowed for briefs. Such argument may be limited by the presiding officer to the extent necessary for the expeditious disposition of the proceeding. The presiding officer shall close the hearing immediately after the last oral argument.

(c) Oral or written arguments shall be limited to issues arising from evidence in the record.

14. Recommended decision; certification of the record. (a) Within twenty-four (24) days after the close of the hearing, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Director. The recommended decision shall include:

(1) A description of the history of the proceedings;

(2) Findings on the issues of fact with reasons therefor; and

(3) Rulings on issues of law with the reasons therefor.

Copies of the recommended decision shall be sent to all parties after the close of the hearing.

(b) The presiding officer shall also transmit to the Director the entire record of the proceeding, accompanied by the presiding officer's certificate stating that, to the best of his knowledge and belief, the record is a complete and accurate compilation of all the evidence and other documents in the proceeding, except in such particulars as are specified.

(c) The recommended decision may be reviewed and copied in Room 408, National Marine Fisheries Service, Page Building No. 2, 3300 Whitehaven Street NW., Washington, D.C. 20235.

(d) Following submission of the recommended decision and the hearing record, each party shall be allowed five (5) days to file exceptions to the recommended decision with the Director. Thereafter, each party will have five days to file reply exceptions with the Director.

15. Director's decision. (a) Following the period allowed for exceptions, the Director shall make a final decision on the proposed regulations. The Director's decision may affirm, modify, or set aside in whole or in part the recommended findings, conclusions, and decision of the presiding officer. The Director may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Director's decision shall include:

(1) A description of the history of the proceeding;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law, with the reasons therefor.

(c) The Director's decision, together with the final adopted regulations, shall be published in the FEDERAL REGISTER.

16. Effective date. These regulations become effective on July 12, 1977 and shall terminate on the date of publication in the FEDERAL REGISTER of the NMFS Director's final decision.

(Sec. 101(a)(2) and 103(e) of the Marine Mammal Protection Act, 16 U.S.C. 1317(a)(2) and 1373(e))

[42 FR 35967, July 13, 1977]

PART 217—GENERAL PROVISIONS

Subpart A—Introduction

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217.3 Other applicable laws.
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217.22 Office of Marine Mammals and Endangered Species.
217.23 Enforcement Division.

AUTHORITY: Endangered Species Act of 1973, sec. 11(f), 87 Stat. 884, Pub. L. 93-205; Fish and Wildlife Act of 1956, sec. 3(d), 88 Stat. 905 amending 85 Stat. 480, unless otherwise noted.

SOURCE: 39 FR 41370, Nov. 27, 1974, unless otherwise noted.

Subpart A—Introduction

§ 217.1 Purpose of regulations.

The regulations of Parts 217-222 are promulgated to implement the following statutes enforced by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, which regulate the taking, possession, transportation, sale, purchase, barter, exportation, and importation of wildlife.

(Endangered Species Act of 1973, section 11(f), 87 Stat. 884, Pub. L. 93-205; Fish and Wildlife Act of 1956, 16 U.S.C. 742a-1)

§ 217.2 Scope of regulations.

The various provisions of Parts 217-222 of this chapter are interrelated, and particular note should be taken that the parts must be construed with reference to each other. The regulations in Parts 217-222 apply only for fish or wildlife under the jurisdictional responsibilities of the Secretary of Commerce for the purpose of carrying out the Endangered Species Act of 1973 (see Part 222, § 222.23(a)). Endangered species of fish or wildlife other than those covered by these regulations are under the jurisdiction of the Secretary of the Interior. For rules and procedures relating to such species, see 50 CFR Parts 10-17.

§ 217.3 Other applicable laws.

No statute or regulation of any State shall be construed to relieve a person from the restrictions, conditions, and requirements contained in Parts 217-222 of this chapter. In addition, nothing in Parts 217-222 of this chapter, nor any permit issued under Parts 217-228 of this chapter, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of any State or of the United States, including any applicable health, quarantine, agricultural, or customs laws or regulations, or other National Marine Fisheries Service enforced statutes or regulations.

§ 217.4 When regulations apply.

The regulations of Parts 217-222 of this chapter shall apply to all matters, including the processing of permits, arising after the effective date of such regulations, with the following exception:

(a) *Civil penalty proceedings.* Except as otherwise provided in § 218.25, the civil penalty assessment procedures contained in Parts 217-222 of this chapter shall apply only to any proceeding instituted by notice of violation dated subsequent to the effective date of these regulations, regardless of when the act or omission which is the basis of a civil penalty proceeding occurred.

Subpart B—Definitions

§ 217.12 Definitions.

"Act" means the Endangered Species Act of 1973, as amended (Pub. L. 93-205).

"Assistant Administrator" means the Assistant Administrator for Fisheries of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, or his authorized representative.

"Commercial Activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: *Provided, however,* That it does not include the exhibition of commodities by museums or similar cultural or historical organizations.

"Country of exportation" means the last country from which the animal was exported before importation into the United States.

"Country of origin" means the country where the animal was taken from the wild, or the country of natal origin of the animal.

"Fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

"Foreign commerce" includes, among other things, any transaction (1) between persons within one foreign country, or (2) between persons in two or more foreign countries, or (3) between a person within the United States and a person in one or more foreign countries, or (4) between persons within the United States, where the fish or wildlife in question are moving in any country or countries outside the United States.

"Import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the tariff laws of the United States.

"Permit" or "Certificate of Exemption" means any document so designated by the National Marine Fisheries Service and signed by an authorized official of the National Marine Fisheries Service, including any document which modifies, amends, extends or renews any permit or certificate of exemption.

"Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

"Possession" means the detention and control, or the manual or ideal custody of anything which may be the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name. Possession includes the act or state of possessing and that condition of facts under which one can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons. Possession includes constructive possession which means not actual but assumed to exist, where one claims to hold by virtue of some title, without having actual custody.

"Pre-Act Endangered Species Part" means any sperm whale oil, including derivatives and products thereof, which was lawfully held within the United States on December 28, 1973 in the course of a commercial activity; or any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

"Scrimshaw Product" means any art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

"Secretary" means the Secretary of Commerce or his authorized representative.

"State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

"Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.

"Transportation" means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

"United States" means the several States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

"Whoever" means the same as person.

"Wildlife" means the same as fish or wildlife.

(Sec. 3(d), Fish and Wildlife Act of 1956, as amended, 88 Stat. 92 (16 U.S.C. 742b); sec. 11(f), Endangered Species Act of 1973, Pub. L. 93-205, 87 Stat. 884 (16 U.S.C. 1540))

[45 FR 57132, Aug. 27, 1980]

Subpart C—Addresses

AUTHORITY: Sec. 3(d), Fish and Wildlife Act of 1956, as amended, 88 Stat. 92 (16 U.S.C. 742b); sec. 11(f), Endangered Species Act of 1973, Pub. L. 93-205, 87 Stat. 884 (16 U.S.C. 1540).

SOURCE: 45 FR 57133, Aug. 27, 1980, unless otherwise noted.

§ 217.21 Assistant Administrator.

Mail forwarded to the Assistant Administrator for Fisheries should be addressed:

Assistant Administrator for Fisheries, F
National Marine Fisheries Service
Washington, D.C. 20235

§ 217.22 Office of Marine Mammals and Endangered Species.

Mail in regard to permits should be addressed to:

Office of Marine Mammals and Endangered Species, F/MM
National Marine Fisheries Service
Washington, D.C. 20235

§ 217.23 Enforcement Division.

Mail in regard to enforcement and certificates of exemption should be addressed to:

Enforcement Division, F/CM5
National Marine Fisheries Service
Washington, D.C. 20235

PART 218—CIVIL PROCEDURES

Subpart A—Introduction

Sec.

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Subpart C—Hearing and Appeal Procedures

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218.24 Final administrative action.
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AUTHORITY: Endangered Species Act of 1973, sec. 11(f), 87 Stat. 884, Pub. L. 93-205.

SOURCE: 39 FR 41371, Nov. 27, 1974, unless otherwise noted.

Subpart A—Introduction

§ 218.1 Purpose of regulations.

The regulations contained in this part provide uniform rules and procedures for the assessment of civil penalties in connection with violations of certain laws and regulations enforced by the National Marine Fisheries Service.

§ 218.2 Scope of regulations.

The regulations contained in this part apply only to actions arising under the following laws and regulations issued thereunder:

Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205.

§ 218.3 Filing of documents.

(a) Whenever a document or other paper is required to be filed under this part within a certain time, such document or paper will be considered filed as of the date of the postmark, if mailed, or the date actually delivered to the office where filing is required. The time periods set forth in this part shall begin to run as of the day following the date of the document or other paper.

(b) If an oral or written application is made to the Director up to 10 calendar days after the expiration of a time period established in this part for the required filing of documents or other papers, the Director may permit a late filing within a fixed period where reasonable grounds are found for an inability or failure to file within the time period required. All such extensions shall be in writing. Except as provided in this subsection, no other requests for an extension of time may be granted.

Subpart B—Assessment Procedure

§ 218.11 Notice of violation.

(a) A notice of violation (hereinafter "notice"), shall be issued by the Director and served personally or by registered or certified mail, return receipt requested, upon the person believed to be subject to a civil penalty (the respondent). The notice shall contain:

(1) A concise statement of the facts believed to show a violation, (2) a specific reference to the provisions of the statute or regulation allegedly violated, and (3) the amount of penalty proposed to be assessed. The notice may also contain an initial proposal for compromise or settlement of the case. The notice shall also advise the respondent of his right to file a petition for relief pursuant to § 218.12, or to await the Director's notice of assessment.

(b) The respondent shall have 45 days from the date of the notice of violation in which to respond. During this time he may:

(1) Undertake informal discussions with the Director;

(2) Accept the proposed penalty, or the compromise, if any, offered in the notice;

(3) File a petition for relief; or

(4) Take no action, and await the Director's decision, pursuant to § 218.13.

(c) Acceptance of the proposed penalty or the compromise shall be deemed to be a waiver of the notice of assessment required by § 218.14, and of the opportunity for a hearing. Any counter offer of settlement shall be deemed a rejection of the proposed offer of compromise.

§ 218.12 Petitions for relief.

If the respondent so chooses he may ask that no penalty be assessed or that the amount be reduced, and he may admit or contest the legal sufficiency of the charge and the Director's allegations of facts, by filing a petition for relief [hereinafter "petition"] with the Director at the address specified in the notice within 45 days of the date thereof. The petition shall be in writing and signed by the respondent. If the respondent is a corporation, the petition must be signed by an officer authorized to sign such documents. It must set forth in full the legal or other reasons for the relief.

§ 218.13 Decision by the Director.

Upon expiration of the period required or granted for filing of a petition for relief, the Director shall proceed to make an assessment of a civil penalty, taking into consideration information available to him and such showing as may have been made by the respondent, either pursuant to § 218.11 or § 218.12, or upon further request of the Director.

§ 218.14 Notice of assessment.

The Director shall notify the respondent by a written notice of assessment, by personal service or by registered or certified mail, return receipt requested, of his decision pursuant to § 218.13. He shall set forth therein the facts and conclusions upon which he decided that the violation did occur and appropriateness of the penalty assessed.

§ 218.15 Request for a hearing.

Except where a right to request a hearing is deemed to have been waived as provided § 218.11, the respondent may, within 45 calendar days from the date of the notice of assessment referred to in § 218.14, file a dated, written request for a hearing with the Director, National Marine Fisheries Service, Washington, D.C. 20235. The request should state the respondent's preference as to the place and date for a hearing. The request must enclose a copy of the notice of violation and notice of assessment. A copy of the request shall be served upon the Director personally or by registered or certified mail, return receipt requested, at the address specified in the notice.

§ 218.16 Final administrative decision.

(a) Where no request for a hearing is filed as provided in § 218.15 the Director's assessment shall become effective and shall constitute the final administrative decision of the Secretary on the 45th calendar day from the date of the notice of assessment.

(b) If a request for a hearing is timely filed in accordance with § 218.15, the date of the final administrative decision in the matter shall be as provided in Subpart C of this part.

§ 218.17 Payment of final assessment.

When a final administrative decision becomes effective in accordance with this Part 218, the respondent shall have 20 calendar days from the date of the final administrative decision within which to make full payment of the penalty assessed. Payment will be timely only if received in Office of the Director during normal business hours, on or before the 20th day. Upon a failure to pay the penalty, the General Counsel of the Department may request the Attorney General to institute a civil action in the U.S. District Court to collect the penalty.

Subpart C—Hearing and Appeal Procedures

§ 218.21 Commencement of hearing proceedings.

Proceedings under this subpart are commenced upon the timely filing with the Director of a request for a hearing, as provided in § 218.15 of Subpart B, of this part. Upon receipt of a request for a hearing, the Secretary will assign an administrative law judge to the case. Notice of assignment will be given promptly to the parties, and thereafter, all pleadings, papers, and other documents in the proceeding shall be filed directly with the administrative law judge, with copies served on the opposing party.

§ 218.22 Appearance and practice.

(a) Subject to the provisions of 43 CFR 1.3, the respondent may appear in person, by representative, or by counsel, and may participate fully in these proceedings.

(b) Counsel designated by the General Counsel of the National Oceanic and Atmospheric Administration shall represent the Director in these proceedings. Upon notice to the Director of the assignment of an administrative law judge to the case, said counsel shall enter his appearance on behalf of the Director and shall file all petitions and correspondence exchanged by the Director and the respondent pursuant to Subpart B of this part, which shall become part of the hearing record. Thereinafter, service upon the Director in these proceedings shall be made to his counsel.

§ 218.23 Hearings.

(a) The administrative law judge shall have all powers accorded by law and necessary to preside over the parties and the proceedings and to make decisions in accordance with 5 U.S.C. 554-557. Failure to appear at the time set for hearing shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the record made at the hearing. Copies of the transcript may be inspected or copied.

(b) The transcript of testimony, the exhibits, and all papers, documents, and requests filed in the proceedings, shall constitute the record for decision. The judge will render a written decision upon the record, which shall set forth his findings of fact and conclusions of law, and the reasons and basis therefor, and an assessment of a penalty, if any.

§ 218.24 Final administrative action.

Unless a notice of request for an appeal is filed in accordance with § 218.25 of this Subpart C, the administrative law judge's decision shall constitute the final administrative determination of the Secretary in the matter and shall become effective 30 calendar days from the date of the decision.

§ 218.25 Appeals.

(a) Either the respondent or the Director may seek an appeal from the decision of an administrative law judge rendered subsequent to February 1, 1974, by the filing of a "Notice of Request for Appeal" with the Secretary within 30 calendar days of the date of the administrative law judge's decision. Such notice shall be accompanied by proof of service on the administrative law judge and the opposing party.

(b) Upon receipt of such a request, the Secretary shall appoint an ad hoc appeals board to determine whether an appeal should be granted, and to hear and decide an appeal. To the extent they are not inconsistent herewith, the provisions of Subpart G of 43 CFR Part 4 shall apply to appeal proceedings under this Subpart. The determination of the board to grant or deny an appeal, as well as its decision on the merits of an appeal, shall be in writing and become effective as the final administrative determination of the Secretary in the proceeding on the date it is rendered, unless otherwise specified therein.

§ 218.26 Reporting service.

Copies of decisions in civil penalty proceedings instituted under statutes referred to in Subpart A of this part and rendered subsequent to February 1, 1974, may be obtained by letter of request addressed to the Secretary. Fees for this service shall be as established by the Secretary.

PART 219—SEIZURE, FORFEITURE, AND DISPOSAL PROCEDURES

Subpart A—Introduction

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219.1 Purpose of regulations.
219.2 Scope of regulations.

Subpart B—Holding, Bonding, and Return of Certain Wildlife or Other Property

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Subpart C—Disposal of Forfeited or Abandoned Items

219.20 Delivery to Administrator.
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219.24 Loans to institutions.
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219.26 Selection of loan recipients.
219.27 Loan agreement.
219.28 Temporary reloans; documents to accompany item.
219.29 Destruction of items.
219.30 Food items.
219.31 Record-keeping.

AUTHORITY: Black Bass Act, 16 U.S.C. 851-856; Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407; Endangered Species Act of 1973, 16 U.S.C. 1531-1543; Lacey Act, 18 U.S.C. 42-44, 3054, 3112; Fish and

Wildlife Improvement Act of 1978, 16 U.S.C. 742*l*(c); Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971g; Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801-1882; Northern Pacific Halibut Act of 1937, 16 U.S.C. 772-772j; North Pacific Fisheries Act of 1954, 16 U.S.C. 1021-1032; Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776-776f; Sponge Act, 16 U.S.C. 781-785; Tuna Conventions Act of 1950, 16 U.S.C. 951-961; Whaling Convention Act of 1949, 16 U.S.C. 916-916*l*; Fur Seal Act of 1966, 16 U.S.C. 1151-1187; Marine Protection, Research, and Sanctuaries Act of 1972, 16 U.S.C. 1431-1434.

SOURCE: 46 FR 31648, June 17, 1981, unless otherwise noted.

Subpart A—Introduction

§ 219.1 Purpose of regulations.

The regulations in this part provide rules and procedures for the seizure, holding, bonding, abandonment, and forfeiture of wildlife and other property, which under certain laws enforced by the National Marine Fisheries Service are subject to seizure and forfeiture.

§ 219.2 Scope of regulations.

The regulations in this part apply to fish, wildlife, or any other items (referred to as "items" hereinafter) which have been forfeited or abandoned to the United States under the following laws and regulations issued thereunder:

(a) Endangered Species Act of 1973, 16 U.S.C. 1531-1543;

(b) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407;

(c) Black Bass Act, 16 U.S.C. 851-856;

(d) Lacey Act, 16 U.S.C. 42-44, 3054, 3112;

(e) Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801-1882;

(f) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971g;

(g) Northern Pacific Halibut Act of 1937, 16 U.S.C. 772-772j;

(h) North Pacific Fisheries Act of 1954, 16 U.S.C. 1021-1032;

(i) Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776-776f;

(j) Sponge Act, 16 U.S.C. 781-785;

(k) Tuna Conventions Act of 1950, 16 U.S.C. 951-961;

(l) Whaling Convention Act of 1949, 16 U.S.C. 916-916*l*;

(m) Fur Seal Act of 1966, 16 U.S.C. 1151-1187;

(n) Marine Protection, Research, and Sanctuaries Act of 1972, 16 U.S.C. 1431-1434.

The regulations in this part are in addition to, and not in contradiction of, any special rules which may provide for the sale of fish and perishable items seized under various of these laws.

Subpart B—Holding, Bonding, and Return of Certain Wildlife or Other Property

§ 219.11 Notification of seizure.

Except where the owner or consignee is personally notified or seizure is made pursuant to a search warrant, the Administrator, or his or her designee, shall, as soon as practicable following his seizure or other receipt of seized wildlife or other property, mail a notification of seizure by registered or certified mail, return receipt requested, to the owner or consignee, if known. Such notification shall describe the seized wildlife or other property, and shall state the time, place, and reason for the seizure.

§ 219.12 Seizure by Customs.

Any authorized employee or officer of the U.S. Customs Service who has seized any wildlife or other property shall deliver such seizure to the Enforcement Division (See § 217.23), or its designee, who shall either hold such seized wildlife or other property or arrange for its proper handling and care.

§ 219.13 Bonded release.

The Administrator, or his or her designee, may, in his or her sole discretion, accept an appearance bond or other security in place of wildlife or other property seized. Said bond or security may contain such additional conditions as may be appropriate. Such bond or security may be in an amount up to $10,000 per offense and shall only be allowed where the Administrator, or his or her designee, determines either that the health or safety of any wildlife so requires, or that the release of the seized wildlife or other property would not frustrate the purposes of the statute.

§ 219.14 Return of seized wildlife or other property.

If, at the conclusion of the appropriate proceedings, the seized wildlife or other property is to be returned to the owner or consignee, the Administrator, or his or her designee, shall issue a letter or other document authorizing its return. This letter or other document shall be delivered personally or sent by registered or certified mail, return receipt requested, and shall identify the owner or consignee, the seized property, and, if appropriate, the bailee of the seized wildlife or other property. It shall also provide that upon presentation of the letter or other document and proper identification, the seized wildlife or other property is authorized to be released, provided it is properly marked in accordance with applicable State or Federal requirements.

§ 219.15 Abandonment provisions.

When any wildlife or other property is subject to seizure and forfeiture, a blank assent to forfeiture form (Customs Form 4607, or a similar National Oceanic and Atmospheric Administration form) may be given or sent, with the notification required by § 218.11 or by § 219.11 to the owner thereof. The owner may voluntarily abandon the wildlife or other property to the Government by executing and returning the assent to forefeiture form. Such abandonment will be considered by the Administrator or his or her designee in the disposition of the case, and may be the basis for the compromise of any proposed assessment of a civil penalty under Part 218.

Subpart C—Disposal of Forfeited or Abandoned Items

§ 219.20 Delivery to Administrator.

Upon forfeiture of any fish, wildlife, parts or products thereof, or other property to the United States, or the abandonment or waiver of any claim to any such property, it shall be delivered to the Administrator, or his or her designee, for storage or disposal according to the provisions of this subpart.

§ 219.21 Definitions.

For the purpose of this Subpart C:

(a) "Abandon" means an owner's surrender of a seized item to NOAA by, but not limited to, expressly waiving any claim to the item, refusing or otherwise avoiding delivery of mail concerning the seizure (as by giving a false name or address), or failing for more than 180 days to make or maintain a claim to the item. An item will be declared finally abandoned, without recourse, upon a finding of abandonment, as defined here.

(b) "Disposal" includes, but is not limited to, loan, gift, sale or destruction of an item, except that no marine mammal or endangered species item may be sold.

(c) "Forfeiture" includes, but is not limited to, surrender or relinquishment of any claim to an item by written agreement, or otherwise; or extinguishment of any claim to, and transfer of title to an item to the Government by court order or by order of the NOAA Administrator (or designee) under a statute.

(d) "Waiver of any claim" includes, but is not limited to, failing to respond within 120 days of issuance of a Government Notice concerning the seizure; or voluntarily relinquishing any interest in an item by written agreement, or otherwise. An item will be declared finally abandoned, without recourse, upon a finding of waiver, as defined here.

§ 219.22 Purposes of disposal.

Disposal procedures may be used to alleviate overcrowding of evidence storage facilities, and to avoid the accumulation of seized items where disposal is not otherwise accomplished by court order, as well as to address the needs of governmental agencies and other institutions and organizations for such items for scientific, educational, and public display purposes. In no case shall items be used for personal purposes, either by loan recipients or government personnel.

§ 219.23 Disposal of evidence.

Items that are evidence shall be disposed of only after authorization by the NOAA Office of General Counsel. Disposal approval usually will not be given until the case involving the evidence is closed, except that perishable items may be authorized for disposal sooner.

§ 219.24 Loans to institutions.

Items approved for disposal may be loaned to institutions or organizations requesting such items for scientific, educational, or public display purposes. Items will be loaned only after execution of a loan agreement which provides, among other things, that the loaned items will be used only for noncommercial scientific, educational, or public display purposes, and that they will remain the property of the United States government, which may demand their return at any time. Parties requesting the loan of an item must demonstrate the ability to provide adequate care and security for the item. Loans may be made to responsible agencies of foreign governments in accordance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

§ 219.25 Loans to individuals.

Items generally will not be loaned to individuals not affiliated with an institution or organization unless it is clear that the items will be used in a noncommercial manner, and for scientific, educational, or public display purposes which are in the public interest.

§ 219.26 Selection of loan recipients.

Recipients of items will be chosen so as to assure a wide distribution of the items throughout the scientific, educational, public display and museum communities. Other branches of NMFS, NOAA, the Department of Commerce, and other governmental agencies will have the right of first refusal of any item offered for disposal. The Administrator, or his or her designee, may solicit applications, by publication of a notice in the FEDERAL REGISTER, from qualified persons, institutions, and organizations who are interested in obtaining the property being offered. Such notice will contain a statement as to the availability of specific items for which transferees are being sought, and instructions on how and where to make application. Applications will be granted in the following order: other offices of NMFS, NOAA, and the Department of Commerce; U.S. Fish and Wildlife Service; other Federal agencies; other governmental agencies; scientific, educational, or other public or private institutions; and private individuals.

§ 219.27 Loan agreement.

Items will be transferred pursuant to a loan agreement executed by the Administrator, or his or her designee, and the borrower. Any attempt on the part of the borrower to retransfer an item, even to another institution for related purposes, will violate and invalidate the loan agreement, and entitle the United States to immediate repossession of the item, unless the prior approval of the Administrator, or his or her designee, has been obtained pursuant to § 219.28. Violation of the loan agreement may also subject the violator to the penalties provided by the laws governing possession and transfer of the item.

§ 219.28 Temporary reloans; documents to accompany items.

Temporary reloans by the borrower to another qualified borrower (as for temporary exhibition) may be made if the Administrator, or his or her disignee, is advised in advance by the borrowers. Temporary loans for more than thirty days must be approved in advance in writing by the Administrator or his or her designee. A copy of the original loan agreement, and a copy of the written approval for reloan, if any, must accompany the item whenever it is temporarily reloaned or is shipped or transported across state or international boundaries.

§ 219.29 Destruction of items.

This paragraph and other provisions relating to the destruction of property apply to items—

(a) Which have not been handicrafted, or

(b) Which have been handicrafted and are of less than one hundred dollars ($100) value, and

(c) For which no acceptable applications have been received, or for which publication in the FEDERAL REGISTER of the availability of similar items in the past has resulted in the receipt of no applications.

Such items may be destroyed if they have been in government ownership for more than one year. Perishable items which are not fit for human consumption may be destroyed sooner, if the authorization required by § 219.23 has been obtained. Destruction of items shall be witnessed by two persons, one of whom may be the disposing officer.

§ 219.30 Food items.

Food items shall, if possible, be disposed of by gift to nonprofit groups providing public welfare food services.

§ 219.31 Record-keeping.

A "fish and wildlife disposal" form shall be completed each time an item is disposed of pursuant to the policy and procedure established herein, and shall be retained in the case file for the item. These forms shall be available to the public.

PART 220—GENERAL PERMIT PROCEDURES

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Subpart E—Permits Involving Endangered or Threatened Sea Turtles

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220.52 Issuance of permits.
220.53 Other requirements.

AUTHORITY: Endangered Species Act of 1973, sec. 11(f), 87 Stat. 884, Pub. L. 93-205; act of August 31, 1951, Ch. 376, Title 5, sec. 501, 65 Stat. 290 (31 U.S.C. 483a).

SOURCE: 39 FR 41373, Nov. 27, 1974, unless otherwise noted.

Subpart A—Introduction

§ 220.1 General.

Each person intending to engage in an activity for which a permit is required by Parts 217-222 of this chapter or the Endangered Species Act of 1973 shall, before commencing such activity, obtain a valid permit authorizing such activity. Each person who desires to obtain the permit privileges authorized by Parts 217-222 of this chapter must make application for such permit in accordance with the requirements of this Part 220 of this chapter and the other regulations in Parts 217-222 of this chapter which set forth the additional requirements for the specific permits desired. If the activity for which permission is sought is covered by the requirements of more than one part of Parts 217-222 of this chapter, the requirements of each part must be met. If the information required for each specific permitted activity is included, one application may be accepted for all permits required, and a single permit may be issued.

§ 220.2 Purpose of regulations.

The regulations contained in this part will provide uniform rules and procedures for application, issuance, renewal, conditions, and general administration of permits issuable pursuant to Parts 217-222 of this chapter.

§ 220.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of Parts 217-222 of this chapter and apply to all permits issued thereunder, including "Endangered Fish or Wildlife" (Part 222).

§ 220.4 Emergency variation from requirements.

The Director may approve variations from the requirements of this part when he finds that an emergency exists and that the proposed variations will not hinder effective administration of Parts 217-222 of this chapter, and will not be unlawful.

Subpart B—Application for Permits

§ 220.11 Procedure for obtaining a permit.

The following general procedures apply to applications for permits:

(a) *Forms.* Applications must be submitted by letter containing all necessary information, attachments, certification, and signature. In no case will oral or telephone applications be accepted.

(b) *Forwarding instructions.* Applications must be submitted to the Director, National Marine Fisheries Service. The address is listed in § 217.21.

(c) *Time requirement.* Applications must be received by the appropriate official of the National Marine Fisheries Service at least 90 calendar days prior to the date on which the applicant desires to have the permit made effective. The National Marine Fisheries Service will, in all cases, attempt to process applications deemed sufficient in the shortest possible time. The National Marine Fisheries Service does not, however, guarantee 90 days issuance after publication in the FEDERAL REGISTER of receipt of a permit application and some permits cannot be issued within that time period.

§ 220.12 [Reserved]

§ 220.13 Abandoned application.

Upon receipt of an insufficiently or improperly executed application, the applicant shall be notified of the deficiency in the application. If the applicant fails to supply the deficient information or otherwise fails to correct the deficiency within 60 days following the date of notification, the application shall be considered abandoned.

Subpart C—Permit Administration

§ 220.21 Issuance of permits.

(a) No permit may be issued prior to the receipt of a written application therefor, unless a written variation from the requirements, as authorized by § 220.4 is inserted into the official file of the National Marine Fisheries Service. Any representation of an employee or agent of the United States Government shall not be construed as a permit unless it meets the requirements of a permit as defined in 50 CFR 217.12.

(b) The Director shall issue the appropriate permit unless—

(1) The applicant has been assessed a civil penalty or convicted of any civil or criminal provision of any statute or regulation relating to the activity for which the application is filed, if such assessment or conviction, evidences a lack of responsibility;

(2) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his application;

(3) The applicant has failed to demonstrate a valid justification for the permit or a showing of responsibility;

(4) The authorization requested potentially threatens a wildlife population, or

(5) The Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(c) Each permit shall bear a serial number. Such number may be reassigned to the permittee to whom issued so long as he maintains continuity of renewal.

(d) The applicant shall be notified in writing of the denial of any permit request, and the reasons therefor. If authorized in the notice of denial, the applicant may submit further information, or reasons why the permit should not be denied. Such further submissions shall not be considered a new application. The final action by the Director shall be considered the final administrative decision of the Department.

§ 220.22 Duration of permit.

Permits shall entitle the person to whom issued to engage in the activity specified in the permit, within the limitations of the applicable statute and regulations contained in Parts 217-222 of this chapter for the period stated on the permit, unless sooner terminated.

§ 220.23 [Reserved]

§ 220.24 Renewal of permit.

Where the permit is renewable and a permittee intends to continue the activity described in the permit during any portion of the year ensuing its expiration, he shall, unless otherwise notified in writing by the Director, file a request for permit renewal, together with a certified statement that the information in his original application is still currently correct, or a statement of all changes in the original application, accompanied by any required fee at least 30 days prior to the expiration of his permit. Any person holding a valid renewable permit, who has complied with the foregoing provision of this section, may continue such activities as were authorized by his expired permit until his renewal application is acted upon.

§ 220.25 Permits not transferable; agents.

(a) Permits issued under Parts 220-222 are not transferable or assignable. Some permits authorize certain activities in connection with a business or commercial enterprise and in the event of any lease, sale, or transfer of such business entity, the successor must obtain a permit prior to continuing the permitted activity. However, certain limited rights of succession are provided in § 220.26.

(b) Except as otherwise stated on the face of a permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for the purposes authorized by the permit, may carry out the activity authorized by the permit.

§ 220.26 Right of succession by certain persons.

(a) Certain persons, other than the permittee, are granted the right to carry on a permitted activity for the remainder of the term of a current permit provided they comply with the provisions of paragraph (b) of this section. Such persons are the following:

(1) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; and

(2) A receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(b) In order to secure the right provided in this section, the person or persons desiring to continue the activity shall furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity.

§ 220.27 Change of mailing address.

During the term of his permit, a permittee may change his mailing address without procuring a new permit. However, in every case notification of the new mailing address must be forwarded to the issuing official within 30 days after such change. This section does not authorize the change of location of the permitted activity for which an amendment must be obtained.

§ 220.28 Change in name.

A permittee continuing to conduct a permitted activity is not required to obtain a new permit by reason of a mere change in trade name under which a business is conducted or a change of name by reason of marriage or legal decree: *Provided,* That such permittee must furnish his permit to the issuing official for endorsement within 30 days from the date the permittee begins conducting the permitted activity under the new name.

§§ 220.29-220.30 [Reserved]

§ 220.31 Discontinuance of activity.

When any permittee discontinues his activity, he shall, within 30 days thereof, mail his permit and a request for cancellation to the issuing officer, and said permit shall be deemed void upon receipt. No refund of any part of an amount paid as a permit fee shall be made where the operations of the permittee are, for any reason, discontinued during the tenure of an issued permit.

Subpart D—Conditions

§ 220.42 Permits are specific.

The authorizations on the face of a permit which set forth specific times, dates, places, methods of taking, numbers and kinds of fish or wildlife, location of activity, authorize certain circumscribed transactions, or otherwise permit a specifically limited matter, are to be strictly construed and shall not be interpreted to permit similar or related matters outside the scope of strict construction.

§ 220.43 Alteration of permits.

Permits shall not be altered, erased, or mutilated, and any permit which has been altered, erased, or mutilated shall immediately become invalid.

§ 220.44 Display of permit.

Any permit issued under Parts 220-222 shall be displayed for inspection upon request to the Director or his agent, or to any other person relying upon its existence.

§ 220.45 Filing of reports.

Permittees may be required to file reports of the activities conducted under the permit. Any such reports shall be filed not later than March 31 for the preceding calendar year ending December 31, or any portion thereof, during which a permit was in force, unless the regulations of Parts 217-222 of this chapter or the provisions of the permit set forth other reporting requirements.

§ 220.46 Maintenance of records.

From the date of issuance of the permit, the permittee shall maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of fish or wildlife pursuant to such permit. Such records shall be kept current and shall include names and addresses of persons with whom any fish or wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction, and such other information as may be required or appropriate. Such records, unless otherwise specified, shall be entered in books, legibly written in the English language. Such records shall be retained for 5 years from the date of issuance of the permit.

§ 220.47 Inspection requirement.

Any person holding a permit under Parts 217-222 of this chapter shall allow the Director's agent to enter his premises at any reasonable hour to inspect any fish or wildlife held or to inspect, audit, or copy any permits, books, or records required to be kept by regulations of Parts 217-222 of this chapter or by the Endangered Species Act of 1973.

Subpart E—Permits Involving Endangered or Threatened Sea Turtles

SOURCE: 43 FR 32809, July 28, 1978, unless otherwise noted.

§ 220.50 Purpose.

This subpart establishes procedures for issuance of permits for scientific purposes or to enhance the propagation or survival of "endangered" or "threatened" sea turtles and zoological exhibition or educational purposes for "threatened" sea turtles.

§ 220.51 Permit applications.

Applications for permits to take, import, export or engage in any other prohibited activity involving any species of sea turtle listed in 50 CFR 17.11 shall be submitted to the Wildlife

Permit Office (WPO) of the U.S. Fish and Wildlife Service in accordance with either, 50 CFR 17.22(a) (Endangered Species) or 50 CFR 17.32(a) (Threatened Species) as appropriate. Applications involving activities under the jurisdiction of the National Marine Fisheries Service (NMFS) as defined in 50 CFR 222.23(a) and 50 CFR 227.4 shall be forwarded by the WPO to NMFS.

§ 220.52 Issuance of permits.

(a) Applications under the jurisdiction of the WPO shall be reviewed and acted upon in accordance with 50 CFR 17.22 or 50 CFR 17.32 as appropriate.

(b) NMFS shall make a complete review of applications forwarded to it by the WPO in accordance with § 220.51 and determine the appropriate action to be taken in accordance with 50 CFR 220.21(b) and 222.23(c). In instances where the application involves activities solely within NMFS jurisdiction, NMFS shall issue permits or letters of denial and provide WPO with copies of its actions.

(c) Where a permit application involves activities under both NMFS and FWS jurisdiction, each agency will process the application for activities under its jurisdiction. WPO will issue either a permit or a letter of denial.

(d) Where a permit application for activities under NMFS jurisdiction also requires a permit under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (TIAS 8249, July 1, 1975) (CITES) (50 CFR Part 23), NMFS will process the application for activities under its jurisdiction. WPO will issue the final document by means of a combination ESA/CITES permit or a letter of denial.

§ 220.53 Other requirements.

Permits issued by NMFS under this Subpart shall be administered and comply with the provisions of 50 CFR Parts 217-227 as appropriate.

PART 221—DESIGNATED PORTS

§ 221.1 Importation and exportation at designated ports.

Any fish or wildlife (other than shellfish and fishery products which (a) are not endangered or not threatened species, and (b) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) which is subject to the jurisdiction of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce and is intended for importation into or exportation from the United States, shall not be imported or exported except at a port or ports designated by the Secretary of the Interior. The Secretary of the Interior may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or for other reasons if he deems it appropriate and consistent with the purpose of facilitating enforcement of the Endangered Species Act and reducing the costs thereof. Importers and exporters are advised to see 50 CFR Part 14 for importation and exportation requirements and information.

(Endangered Species Act of 1973, sec. 11(f), 87 Stat. 884, Pub. L. 93-205)

[39 FR 41375, Nov. 27, 1974]

PART 222—ENDANGERED FISH OR WILDLIFE

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Subpart A—Introduction

§ 222.1 Purpose of regulations.

The regulations contained in this part identify the species or subspecies of fish or wildlife determined to be endangered under either the Endangered Species Conservation Act of 1969 or the Endangered Species Act of 1973, and presently deemed endangered species under the Endangered Species Act of 1973, which are under the jurisdiction of the Secretary of Commerce, and establish procedures and criteria for issuance of permits for the taking, importation, exportation, or otherwise prohibited acts, involving endangered fish or wildlife. The regulations of this part implement, in part, the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205, as amended.

(Sec. 11(f), Endangered Species Act of 1973, Pub. L. 93-205, 87 Stat. 884 (16 U.S.C. 1540))

[45 FR 57133, Aug. 27, 1980]

§ 222.2 Scope of regulations.

(a) The regulations of this part apply only to endangered fish or wildlife.

(b) The provisions in this part are in addition to, and are not in lieu of, other regulations of Parts 217-222 of this chapter which may require a permit or prescribe additional restrictions or conditions for the taking, importation, exportation, and interstate transportation of fish or wildlife. (See also Parts 220 and 221 of this chapter.)

(Sec. 11(f), Endangered Species Act of 1973, Pub. L. 93-205, 87 Stat. 884 (16 U.S.C. 1540))

[45 FR 57133, Aug. 27, 1980]

Subpart B—Certificates of Exemption for Pre-Act Endangered Species Parts

AUTHORITY: 5 U.S.C. 553(d)(3); Pub. L. 94-359, 90 Stat. 911 (16 U.S.C. 1539).

SOURCE: 45 FR 57134, Aug. 27, 1980, unless otherwise noted.

§ 222.11-1 General certificate of exemption requirements.

(a) The Assistant Administrator, pursuant to the provisions of the Endangered Species Act, and pursuant to the provisions of this paragraph, except for importation, may exempt any pre-Act endangered species part from one or more of the following:

(1) The prohibition, as set forth in section 9(a)(1)(A) of the Act, to export any such species part from the United States;

(2) The prohibitions, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship to interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity any such species part;

(3) The prohibitions, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

(b) No person shall engage in any of the above activities involving any pre-Act endangered species part without a valid certificate of exemption, or evidence of a right thereunder, issued pursuant to this Subpart B.

§ 222.11-2 Application renewal procedure.

(a) Any person to whom a certificate of exemption has been issued by the National Marine Fisheries Service and who desires to obtain a renewal of such certificate of exemption may make application therefor to the Assistant Administrator. The sufficiency of the application shall be determined by the Assistant Administrator in accordance with the requirements of this part and, in that connection, he may waive any requirement for information, or require any elaboration for further information deemed necessary.

(b) One copy of a completed application for renewal shall be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

(c) The outside of the envelope should be marked, ATTENTION: Enforcement Division, "Certificate of Exemption Request." Assistance may be obtained by writing or calling the Enforcement Division, NMFS, in Washington, D.C. (AC 202, 634-7265). At least 15 days should be allowed for processing. An application for a certificate of exemption shall provide the information contained in § 222.11-3 (when the information requested is not applicable, put "N.A.") and such other information that the Assistant Administrator may require.

§ 222.11-3 Application renewal requirements.

(a) The following information will be used as the basis for determining whether an application for renewal of a certificate of exemption is complete:

(1) Title: Application for Renewal of Certificate of Exemption Under Pub. L. 96-159.

(2) The date of application.

(3) The identity of the applicant including complete name, original certificate of exemption number, current address, and telephone number, including zip and area codes. If the applicant is a corporation, partnership, or association set forth the details.

(4) The period of time for which a renewal of the certificate of exemption is requested; however, no renewal of certificate of exemption, or right claimed thereunder, shall be effective after the close of the three-year period beginning on the date of the expiration of the original certificate of exemption.

(5) A complete and detailed up-dated inventory of all pre-Act endangered species parts for which the applicant seeks exemption. No renewals shall be issued for scrimshaw products in excess of any quantities declared in the original application for a certificate of exemption.

(6) A certification in the following language:

> I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a renewal of my certificate of exemption under the Endangered Species Act of 1973, as amended by Pub. L. 94-359, 90 Stat. 911, Pub. L. 96-159, 93 Stat. 1225, and the Department of Commerce regulations issued thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to the penalties under the Endangered Species Act of 1973.

(7) Signature of the applicant.

(b) Upon receipt of an incomplete or improperly executed application for renewal, the applicant shall be notified by Certified Mail of the deficiency in the application for renewal. If the application for renewal is not corrected and received by the Assistant Administrator within 30 days following the date of receipt of notification, the application for renewal shall be considered as having been abandoned.

§ 222.11-4 Procedures for issuance of renewals of certificates of exemption.

Whenever application for a renewal of a certificate of exemption is received by the Assistant Administrator which the Assistant Administrator deems sufficient, he shall, as soon as practicable, issue a certificate of renewal to the applicant.

§ 222.11-5 Application for modification of certificate of exemption by holder.

Where circumstances have changed so that an applicant or certificate of exemption holder desires to have any material term or condition of his application or certificate modified, he must submit in writing full justification and supporting information in conformance with the provisions of this part.

§ 222.11-6 Amendment of certificates of exemption.

All certificates are issued subject to the condition that the Assistant Administrator reserves the right to amend the provisions of a certificate of exemption for just cause at any time. Such amendments take effect on the date of notification, unless otherwise specified.

§ 222.11-7 Procedures for suspension or revocation of certificates of exemption.

(a) Any violation of the applicable provisions of Parts 217-222 of this chapter, or of the Act, or of a condition of the certificate of exemption may subject the certificate holder to the following penalties:

(1) The penalties provided in the Act; and

(2) Temporary suspension of the certificate of exemption for a specified period; and/or

(3) Revocation of the certificate of exemption. When revoked, the certificate must be surrendered to the Assistant Administrator on demand.

(b) Except in cases of willfulness or those in which the public health, safety, or interest requires, prior to any suspension or revocation of a certificate of exemption, the certificate of exemption holder shall be given:

(1) Notice by the National Marine Fisheries Service in writing of the facts or conduct which may warrant the suspension or revocation; and

(2) Opportunity to demonstrate or achieve compliance with all certificate of exemption requirements.

§ 222.11-8 Subsequent purchaser provisions.

(a) Any person granted an exemption, including a renewal, pursuant to this subpart, upon an interstate sale of any exempted pre-Act endangered species part, shall supply a copy of the certificate of exemption as well as a signed written certification to each purchaser that such part may lawfully be sold, transported, or exported pursuant to the terms of an exemption granted under the Act and the regulations promulgated thereunder.

(b) Any subsequent purchaser, unless an ultimate user, shall upon an interstate sale supply a copy of the certificate of exemption as well as a signed written certification to each purchaser of such part that such part may lawfully be sold, transported, or exported pursuant to the terms of a certificate of exemption granted under the Act and the regulations promulgated thereunder. An ultimate user, for the purposes of this paragraph, shall mean any person who has acquired such endangered species part for his own consumption, or personal use. An endangered species part shall be considered to be consumed when a new, commercially salable and identifiable product has been made, fabricated or processed using or containing sperm whale oil, including spermaceti, in a condition where it cannot be readily recaptured and marketed as sperm oil or spermaceti: *Provided, however,* That the processing of sperm oil to merely change its precise chemical properties, or to convert it from a liquid to a solid or vice versa, shall not be considered a new, commercially salable and identifiable product which has been consumed.

(c) Any interstate purchaser of pre-Act endangered species parts shall, unless an ultimate user, within 90 days after the receipt of such parts, submit to the Assistant Administrator a written report specifying the quantity of such parts or products received, the name and address of the seller, a copy of the certification supplied pursuant to paragraph (a) of this section, the date on which such parts were received, and the intended use of such parts by the purchaser.

§ 222.11-9 Duration of certificate of exemption.

A certificate of exemption shall not be valid for a period exceeding three years from the date of issuance, unless renewed in accordance with the procedures set forth in § 222.11-3, of this part. However, no renewal shall be valid for more than three years from the expiration date of the original certificate of exemption. The certificate of exemption, including any renewal thereof, shall entitle any person having a right thereunder to engage in the business or activity specified in the certificate of exemption, within the limitations of the Act and the regulations contained in this subpart, for the period stated in the certificate of exemption, unless sooner terminated.

§ 222.12 Locations covered by certificate of exemption.

The certificate of exemption covers the business or activity specified in the certificate of exemption at the address described therein. Accordingly, any change in business address must be reported to the Assistant Administrator in writing. Upon such notification, the Assistant Administrator will record the change of address on the certificate of exemption. No certificate of exemption is required to cover a separate warehouse or similar facility used by the certificate of exemption holder solely for storage of pre-Act endangered species parts, if the records required by this subpart are maintained at the address specified in the certificate of exemption and which is served by such warehouse or storage facility.

§ 222.12-1 Certificate of exemption not transferable; exception.

Certificates of exemption issued under this subpart are not transferable: *Provided,* That in the event of the lease, sale or other transfer of the operations or activity authorized by the certificate of exemption the successor is not required by this subpart to obtain a new certificate of exemption prior to commencing such operations or activity. In such case, the successor will be treated as a subsequent purchaser and must comply with the record and reporting requirements set forth in § 222.11-8.

§ 222.12-2 Change of address.

A certificate of exemption holder may during the term of the certificate of exemption move his business or activity to a new location at which he intends regularly to carry on such business or activity, without obtaining a new certificate of exemption. However, in every case, notification of the new location of the business or activity must be given in writing within 10 days of such move to the Assistant Administrator. In each instance, the certificate of exemption must be endorsed by the Assistant Administrator. After endorsement of the certificate of exemption the Assistant Administrator will provide an amended certificate of exemption to the person to whom issued.

§ 222.12-3 Certain continuance of business.

A certificate of exemption holder who requests that his certificate of exemption be amended by the Assistant Administrator for corrections or endorsement in compliance with the provisions contained in this subpart, may continue his operations while awaiting action by the Assistant Administrator.

§ 222.12-4 Change in trade name.

A certificate holder continuing to conduct business at the location shown on his certificate of exemption is not required to obtain a new certificate of exemption by reason of a change in trade name under which he conducts his business: *Provided,* That such certificate of exemption holder requests in writing that his certificate of exemption be endorsed to reflect such change of name to the Assistant Administrator within 30 days from the date the certificate of exemption holder begins his business under the new name.

§ 222.12-5 State or other law.

A certificate of exemption issued under this subpart confers no right or privilege to conduct a business or an activity contrary to State or other law. Similarly, compliance with the provisions of any State or other law affords no immunity under any Federal laws or regulations of any other Federal Agency.

§ 222.12-6 Right of entry and examination.

Any person authorized to enforce the Act may enter during business hours the premises, including places of storage, of any holder of a certificate of exemption or of any subsequent purchaser for the purpose of inspecting or examining any records or documents required to be kept by such certificate of exemption holder or successor under this subpart, and any endangered species parts at such premises of location.

§ 222.12-7 Records.

The records pertaining to pre-Act endangered species parts prescribed by this subpart shall be in permanent form, and shall be retained at the address shown on the certificate of exemption, or at the principal address of a subsequent purchaser in the manner prescribed by this subpart.

§ 222.12-8 Record of receipt and disposition.

(a) Each holder of a certificate of exemption shall maintain records of all pre-Act endangered species parts he receives, sells, transfers, distributes or disposes of otherwise. Each subsequent purchaser of the pre-Act endangered species parts shall similarly maintain records of all such parts or products he receives or distributes for the purpose of sale, distribution or industrial use.

(b) Such records as referred to in paragraph (a) of this section may consist of invoices or other commercial records which shall be filed in an orderly manner separate from other commercial records maintained, and be readily available for inspection. Such records shall (1) show the name of the seller or other transferor, (2) show the type, quantity, and identity of the part or product, (3) show the date of such acquisition, and (4) be retained, in accordance with the requirements of this subpart, for a period of not less than three years following the date of the acquisition, or transfer.

(c) Each certificate of exemption holder and each subsequent purchaser shall, when required by letter issued by the Assistant Administrator, submit for the periods and times specified in the letter, all record information required by this subpart, or such other record information as the Assistant Administrator may specify in this letter.

(d) The Assistant Administrator may authorize the record information to be submitted in a manner other than that prescribed in paragraph (b) of this section when it is shown by the record holder that an alternate method of reporting is reasonably necessary and will not hinder the effective administration or enforcement of this subpart.

§ 222.12-9 Importation.

No pre-Act endangered species part shall be imported into the United States, and a certificate of exemption issued in accordance with the provisions of this subpart confers no right or privilege to import into the United States any such part.

§ 222.13 Exportation.

(a) Any person desiring to export from the United States any pre-Act endangered species part or scrimshaw product, must possess a valid certificate of exemption issued in accordance with the provisions of this subpart.

(b) In addition to other information, which may be required by this subpart, the exporter will notify the Assistant Administrator by letter which shall show the name and address of the foreign consignee, the intended port of exportation, and a complete description of the parts to be exported. Such information should reach the Assistant Administrator not less than 10 days prior to shipment.

(c) No pre-Act endangered species part or scrimshaw product which is to be exported from the United States under a certificate of exemption issued therefor, shall be exported except at a port or ports designated by the Secretary of the Interior. The Secretary of the Interior may permit the exportation at non-designated ports for any reason if he deems it appropriate and consistent with the purposes of the Endangered Species Act, as amended, or it will facilitate the administration or enforcement of the Act and reducing the costs thereof. Exporters are advised to see 50 CFR Part 14 for a listing of the designated ports.

§ 222.13-1 Procedure by exporter.

Shipment may not be made until the requirements of § 222.13 are met by the exporter. A copy of the certificate of exemption, and any endorsements thereto, must be sent by the exporter to the District Director of Customs at the port of exportation, and must precede or accompany the shipment in order to permit appropriate inspection prior to lading.

§ 222.13-2 Action by Customs.

Upon receipt of a certificate of exemption authorizing the exportation of pre-Act endangered species parts or scrimshaw products, the District Director of Customs may order such inspection as deemed necessary prior to lading of the merchandise. If satisfied that the shipment is proper and agrees with the information contained in the certificate, and any endorsement thereto, the District Director of Customs will clear the merchandise for export. The certificate, and any endorsements, will be forwarded to the Chief, Enforcement Division, F/CM5 National Marine Fisheries Service, Washington, D.C. 20235.

§ 222.13-3 Transportation to effect exportation.

Notwithstanding any provision of this subpart, it shall not be required that authorization be obtained from the Assistant Administrator for the transportation in interstate or foreign commerce of pre-Act endangered species parts to effect an exportation of such parts authorized under the provisions of this subpart.

§ 222.13-4 Burden of proof; presumption.

Any person claiming the benefit of any exemption or certificate of exemption under the Act or regulations, shall have the burden of proving that the exemption or certificate is applicable, has been granted, and was valid and in force at the time of the alleged violation.

Subpart C—Endangered Fish or Wildlife Permits

AUTHORITY: Endangered Species Act of 1973, sec. 11(f), 87 Stat. 884, Pub. L. 93-205, unless otherwise noted.

SOURCE: 39 FR 41375, Nov. 27, 1974, unless otherwise noted.

§ 222.21 General permit requirement.

No person shall take, import, export, or engage in any other prohibited activity involving, any species or subspecies of fish or wildlife which the Secretary has determined to be endangered under the Endangered Species Act of 1973, as evidenced by its inclusion on the list of endangered fish or wildlife (see 50 CFR Chapter I, Part 17) or which the Secretary of the Interior determined to be endangered under the Endangered Species Conservation Act of 1969 and which are now under the jurisdictional responsibilities of the Secretary of Commerce, without a valid permit issued pursuant to this part.

(Pub. L. 94-359)

[41 FR 36028, Aug. 26, 1976]

§ 222.22 [Reserved]

§ 222.23 Permits for scientific purposes or to enhance the propagation or survival of the affected endangered species.

(a) The Director, National Marine Fisheries Service, may issue permits for scientific purposes or to enhance the propagation or survival of the affected endangered species which authorize, under such terms and conditions as he may prescribe, taking, importation, or certain other acts with respect to endangered species otherwise prohibited by section 9 of the Endangered Species Act of 1973. The species listed as endangered under either the Endangered Species Conservation Act of 1969 or the Endangered Species Act of 1973 and currently under the jurisdiction of the Secretary of Commerce are: Shortnose sturgeon (*Acipenser brevirostrum*); Totoaba (*Cynoscian macdonaldi*) Gray whale (*Eschrichtius robustus* (*glaucus, gibbosus*)), Blue whale (*Balaenoptera musculus*), Humpback whale (*Megaptera no-*

vaeangliae), Bowhead whale (*Balaena mysticetus*), Right whales (*Eubalaena* spp.), Fin or finback whale (*Balaenoptera physalus*), Sei whale (*Balaenoptera borealis*), Sperm whale (*Physeter catodon*); Caribean monk seal (*Monachus tropicalis*) Hawaiian monk seal (*Monachus schauinslandi*); Mediterranean monk seal (*Monachus monachus*); Leatherback sea turtle (*Dermochelys coriacea*), Pacific hawksbill sea turtle (*Eretmochelys imbricata bissa*), Atlantic hawksbill sea turtle (*Eretmochelys imbricata imbricata*), Atlantic ridley sea turtle (*Lepidochelys kempii*). Green sea turtle (*Chelonia mydas*) breeding colony populations in Florida and on the Pacific coast of Mexico, and the olive ridley sea turtle (*Lepidochelys olivacea*) breeding colony population on the Pacific coast of Mexico. Of these, the National Marine Fisheries Service has sole agency jurisdiction for sea turtles while the turtles are in the water and the U.S. Fish and Wildlife Service has jurisdiction for sea turtles while the turtles are on land. Within the jurisdiction of a State, more restrictive State laws or regulations in regard to endangered species shall prevail in regard to taking. Proof of compliance with applicable State laws will be required before a permit will be issued.

(b) *Application procedures.* Any person desiring to obtain such a permit may make application therefor to the Director except for permits involving sea turtles in which case the applicant shall follow the procedures set out in 50 CFR Part 220 Subpart E. The sufficiency of the application shall be determined by the Director in accordance with the requirements of this part and, in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The following information will be used as the basis for determining whether an application is complete and whether a permit for scientific purposes or to enhance the propagation or survival of the affected endangered species should be issued by the Director. An original and four copies of the completed application shall be submitted to the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, Washington, D.C. 20235. Assistance may be obtained by writing the Director or calling the Marine Mammal and Endangered Species Division in Washington, D.C. (202-343-9445 and effective Dec. 2, 1974, it will become 202-634-7529). At least 45 days should be allowed for processing. An application for a permit shall provide the following information (when the information requested is not applicable put "N.A.") and such other information that the Director may require:

(1) Title: As applicable, either:

(i) Application for Permit for Scientific Purposes under the Endangered Species Act of 1973; or

(ii) Application for Permit to Enhance the Propagation or Survival of the Endangered Species Under the Endangered Species Act of 1973.

(2) The date of the application.

(3) The identity of the applicant including complete name, address, and telephone number. If the applicant is a partnership or a corporate entity set forth the details. If the endangered species is to be utilized by a person other than the Applicant, set forth the name of that person and such other information as would be required if such person were an Applicant.

(4) A description of the purpose of the proposed acts, including:

(i) A detailed justification of the need for the endangered species, including a discussion of possible alternatives, whether or not under the control of the applicant; and

(ii) A detailed description of how the species will be used.

(5) A detailed description of the project, or program, in which the endangered species is to be used, including:

(i) The period of time over which the project or program will be conducted;

(ii) A list of the names and addresses of the sponsors or cooperating institutions and the scientists involved;

(iii) A copy of the formal research proposal or contract if one has been prepared;

(iv) A statement of whether the proposed project or program has broader significance than the individual researcher's goals (i.e., does the proposed project or program respond directly or indirectly to recommendation of any national or international scientific body charged with research or management of the endangered species, and, if so, how?); and

(v) A description of the arrangements, if any, for the disposition of any dead specimen or its skeleton or other remains, for the continued benefit to science, in a museum or other institutional collection.

(6) A description of the endangered species which is the subject of the application, including the following:

(i) A list of each species and the number of each, including the common and scientific name; the subspecies (if applicable); population group, and range;

(ii) A physical description of each animal, including the age, size, and sex;

(iii) A list of the probable dates of capture or other taking, importation, exportation, and other acts which require a permit, for each animal, and the location of capture or other taking, importation, exportation, and other acts which require a permit, as specifically as possible;

(iv) A description of the status of the stock of each species related insofar as possible to the location or area of taking;

(v) A description of the manner of taking for each animal, including the gear to be used;

(vi) The name and qualifications of the persons or entity which will capture or otherwise take the animals;

(vii) If the capture or other taking is to be done by a contractor, a statement as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the capture or other taking. Accompany such statement with a copy of the proposed contract or a letter from the contractor indicating agreement to capture or otherwise taken the animals, should a permit be granted;

(7) A description of the manner of transportation of any live animal taken, imported, exported, or shipped in interstate commerce, including:

(i) Mode of transportation;

(ii) Name of transportation company;

(iii) Length of time in transit for the transfer of the animal(s) from the capture site to the holding facility;

(iv) Length of time in transit for any future move or transfer of the animal(s) that is planned;

(v) The qualifications of the common carrier or agent used for transportation of the animals;

(vi) A description of the pen, tank, container, cage, cradle, or other devices used, both to hold the animal at the capture site and during transportation;

(vii) Special care before and during transportation, such as salves, antibiotics, moisture; and

(viii) A statement as to whether the animals will be accompanied by a veterinarian or other similarly qualified person, and the qualifications of such person.

(8) Describe the contemplated care and maintenance of any live animals sought, including a complete description of the facilities where any such animals will be maintained including:

(i) The dimensions of the pools or other holding facilities and the number, sex, and age of animals by species to be held in each;

(ii) The water supply, amount, and quality;

(iii) The diet, amount and type, for all animals;

(iv) Sanitation practices used;

(v) Qualifications and experience of the staff; and

(vi) A written certification from a licensed veterinarian knowledgeable about the species (or related species) or group which is the subject of the application, or from a recognized expert on the species (or related species) or group covered in the application that he has personally reviewed the amendments for transporting and maintaining the animal(s) and that in his opinion they are adequate to provide for the well-being of the animal; and

(vii) The availability in the future of a consulting expert or veterinarian meeting paragraph (b)(8)(vi) requirements of this section;

(9) A statement of willingness to participate in a cooperative breeding pro-

gram and maintain or contribute data to a stud book.

(10) A statement of how the applicant's proposed project or program will enhance or benefit the wild population.

(11) For the 5 years preceding the date of this application, provide a detailed description of all mortalities involving species which were under the control of or utilized by the applicant and are either presently listed as endangered species or are taxonomically related within the Order to the species which is the subject of this application, including:

(i) A list of all endangered species and species related to the species which is the subject of this application; captured, transported, maintained, or utilized by the applicant for scientific purposes or to enhance the propagation or survival of the affected species, and/or for all such species caused to be captured, transported, maintained, or utilized for scientific purposes or to enhance the propagation or survival of the affected species, by the Applicant;

(ii) The numbers of mortalities among such animals by species, by date, location of capture, i.e., from which population, and location of such mortalities;

(iii) The cause(s) of any such mortalities; and

(iv) The steps which have been taken by Applicant to avoid or decrease any such mortalities.

(12) A certification in the following language:

> I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Endangered Species Act of 1973 (87 Stat. 864, Pub. L. 93-205, 16 U.S.C. 1531 et seq.) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Endangered Species Act of 1973.

(13) The applicant and/or an officer thereof must sign the application.

(c) *Issuance criteria.* The Director shall specifically consider, among other criteria, the following in determining whether to issue a permit for scientific purposes or to enhance the propagation or survival of the affected endangered species:

(1) Whether the permit was applied for in good faith;

(2) Whether the permit if granted and exercised will not operate to the disadvantage of the endangered species;

(3) Whether the permit would be consistent with the purposes and policy set forth in section 2 of the Act;

(4) Whether the permit would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species;

(5) The status of the population of the requested species, and the effect of the proposed action on the population, both direct and indirect;

(6) If a live animal is to be taken, transported, or held in captivity—the applicant's qualifications for the proper care and maintenance of the species and the adequacy of his facilities;

(7) Whether alternative non-endangered species or population stocks can and should be used;

(8) Whether the animal was born in captivity or was (or will be) taken from the wild;

(9) Provision for disposition of the species if and when the applicant's project or program terminates;

(10) How the applicant's needs, program, and facilities compare and relate to proposed and ongoing projects and programs;

(11) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application;

(12) Opinions or views of scientists or other persons or organizations knowledgeable of the species which is the subject of the application or of other matters germane to the application; and

(d) Permits applied for under this section shall contain terms and conditions as the Director may deem appropriate, including:

(1) The number and kind of species which are covered;

(2) The location and manner of taking;

(3) Port of entry or export;

(4) The methods of transportation, care and maintenance to be used with live species;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the species, its progeny or the species product;

(8) A reasonable fee covering the costs of issuance of such permit, including reasonable inspections and an appropriate apportionment of overhead and administrative expenses of the Department of Commerce. All such fees will be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the service.

[39 FR 41375, Nov. 27, 1974, as amended at 41 FR 51612, Nov. 23, 1976; 43 FR 32809, July 28, 1978; 44 FR 21289, Apr. 10, 1979; 44 FR 29480, May 26, 1979]

§ 222.24 Procedures for issuance of permits.

(a) Whenever application for a permit is received by the Director which the Director deems sufficient, he shall, as soon as practicable, publish a notice thereof in the FEDERAL REGISTER. Information received by the Director as a part of the application shall be available to the public as a matter of public record at every stage of the proceeding. An interested party may within 30 days after the date of publication of such notice, submit to the Director his written data, views, or arguments with respect to the taking, importation, or other action proposed in the application and may request a hearing in connection with the action to be taken thereon.

(b) If a request for a hearing is made within the 30-day period referred to in paragraph (a) of this section, or if the Director determines that a hearing would otherwise be advisable, the Director may, within 60 days after the date of publication of the notice referred to in paragraph (a) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the FEDERAL REGISTER not less than 15 days in advance of such hearing. Any interested person may appear in person or through representatives at the hearing and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(c) As soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section) the Director shall issue or deny issuance of the permit. Notice of the decision of the Director shall be published in the FEDERAL REGISTER within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(d) If a permit is issued, the Director shall publish notice thereof in the FEDERAL REGISTER, including his finding that (1) such permit was applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of the Endangered Species Act of 1973.

(e) The Director may waive the thirty-day period in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Director in the FEDERAL REGISTER within ten days following the issuance of the certificate of exemption or permit. The requirements of this section pertain solely to the permits issued pursuant to § 222.23.

[39 FR 41375, Nov. 27, 1974, as amended at 41 FR 34970, Aug. 18, 1976; 42 FR 28139, June 2, 1977]

§ 222.25 Applications for modification of permit by permittee.

Where circumstances have changed so that an applicant or permittee desires to have any term or condition of his application or permit modified, he must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications for modification are subject to the same issuance criteria as are original applications, as provided in § 222.23(c).

§ 222.26 Amendment of permits by NMFS.

All permits are issued subject to the condition that the National Marine Fisheries Service reserves the right to amend the provisions of a permit for just cause at any time during its term. Such amendments take effect on the date of notification, unless otherwise specified.

§ 222.27 Procedures for suspension or revocation of permits.

(a) Any violation of the applicable provisions of Parts 217-222, or of the statute under which the permit was issued, or of a condition of the permit, may subject the permittee to the following penalties:

(1) The penalty provided in the statute under which the permit was issued;

(2) Temporary suspension of the permit for a specified period; and/or

(3) Revocation of the permit. When revoked, permits must be surrendered to the Director on demand.

(b) Except in cases of willfulness or those in which the public health, safety, or interest requires, prior to any suspension or revocation of a permit, the permittee shall be given:

(1) Notice by the National Marine Fisheries Service in writing of the facts or conduct which may warrant the suspension or revocation; and

(2) Opportunity to demonstrate or achieve compliance with all permit requirements.

§ 222.28 Possession of permits.

(a) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or an agent of such person) during:

(1) The time of the authorized taking, importation, exportation, or other act;

(2) The period of any transit of such person or agent which is incident to such taking, importation, exportation, or other act; and

(3) Any other time while any animal under such permit is in the possession of such person or agent.

(b) A duplicate copy of the issued permit must be physically attached to the tank, container, package, enclosure, or other means of containment, in which the animal is placed for purposes of storage, transit, supervision, or care.

PART 225—FEDERAL/STATE COOPERATION IN THE CONSERVATION OF ENDANGERED AND THREATENED SPECIES

Sec.

225.1 Purpose of regulations.
225.2 Scope of regulations.
225.3 Definitions.
225.4 Cooperation with the States.
225.5 Cooperative agreement.
225.6 Allocation of funds.
225.7 Financial assistance.
225.8 Availability of funds.
225.9 Payments.
225.10 Assurances.
225.11 Submission of documents.
225.12 Project evaluation.
225.13 Contracts.
225.14 Inspection.

AUTHORITY: Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531-1543, Pub. L. 93-205.

SOURCE: 41 FR 24354, June 16, 1976, unless otherwise noted.

§ 225.1 Purpose of regulations.

The regulations in this part implement section 6 of the Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531-1543, Pub. L. 93-205 which provides, under certain circumstances, for cooperative agreements with and financial assistance to the States.

§ 225.2 Scope of regulations.

This part applies to endangered and threatened species under the jurisdiction of the Department of Commerce (see 50 CFR 222.23(a)).

§ 225.3 Definitions.

In addition to the definitions contained in the Act, and unless the context otherwise requires, in this Part 225:

(a) "Act" means the Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531-1543, Pub. L. 93-205.

(b) "Agreements" mean signed documented statements of the actions to be taken by the State(s) and the Director in furthering certain purposes of the Act. They include:

(1) A Cooperative Agreement entered into pursuant to section 6(c) of the Act and, where appropriate, containing provisions found in section 6(d)(2) of the Act.

(2) A Grant-In-Aid Award which includes a statement of the actions to be taken in connection with the conservation of endangered or threatened species receiving Federal financial assistance, objectives and costs of such actions, and costs to be borne by the Federal Government and by the State(s).

(c) "Application for Federal Assistance" means a description of work to be accomplished, including objectives and needs, expected results and benefits, approach, cost, location and time required for completion.

(d) "Director" means the Director of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, or his authorized designee.

(e) "Program" means a State-developed plan for the conservation and management of all resident species which are deemed by the Secretary to be endangered or threatened and those which are deemed by the State to be endangered or threatened, which includes goals, priorities, strategies, actions, and funding necessary to accomplish the objectives on an individual species basis.

(f) "Project" means a substantial undertaking to conserve the various endangered or threatened species.

(g) "Project segment" means an essential part or a division of a project, usually separated as a period of time, occasionally as a unit of work.

(h) "Resident species" means, for purposes of these regulations, with respect to a State, a species which exists in the wild in that State during any part of its life.

(i) "Secretary" means the Secretary of Commerce or his authorized designee.

§ 225.4 Cooperation with the States.

The Director shall cooperate with any State which establishes and maintains an adequate and active program for the conservation of endangered and threatened species. In order for a State program to be deemed an adequate and active program, the Director must find and reconfirm, on an annual basis, that:

(a) Authority resides in a State agency to conserve resident species determined by the State agency or the Director to be endangered or threatened;

(b) The State agency has established an acceptable conservation program, consistent with the purposes and policies of the Act, for all resident species in the State which are deemed by the Director to be endangered or threatened; and has furnished a copy of such program together with all pertinent details, information and data requested to the Director;

(c) The State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species;

(d) The State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened species; and

(e) Provisions are made for public participation in designating resident species as endangered or threatened.

§ 225.5 Cooperative agreement.

Following receipt of an application by a State for a Cooperative Agreement and a determination by the Director that the State program for endangered and threatened species is adequate and active, the Director shall enter into an Agreement with the State. A Cooperative Agreement is necessary before a Grant-In-Aid

Award can be approved for endangered or threatened species projects. The Cooperative Agreement must be reconfirmed annually to insure that it reflects new laws, species lists, rules or regulations, and programs, and to demonstrate that the program is still active and adequate. In order for a State to receive financial assistance, such Cooperative Agreement must also contain:

(a) The actions that are to be taken by the Director and the State;

(b) The benefits that are expected to be derived in connection with the conservation of endangered or threatened species; and

(c) The estimated cost of these actions.

§ 225.6 Allocation of funds.

The Director shall allocate funds, appropriated for the purpose of carrying out section 6 of the Act, to various States using the following as the basis for his determination:

(a) The international commitments of the United States to protect endangered or threatened species;

(b) The readiness of a State to proceed with a conservation program consistent with the objectives and purposes of the Act;

(c) The number of federally listed endangered and threatened species within a State;

(d) The potential for restoring endangered and threatened species within a State; and

(e) The relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of survival of the species.

§ 225.7 Financial assistance.

(a) Before any Federal funds may be obligated for any project to be undertaken in a State, the State must have entered into a Cooperative Agreement. Subsequent to such agreement, the Director may further agree with a State(s) to provide financial assistance in the development and implementation of acceptable projects for the conservation of endangered and threatened species. Documents to provide financial assistance will consist of an Application for Federal Assistance and a Grant-In-Aid Award. The availability of Federal funds under a Grant-In-Aid Award shall be contingent upon the continued existence of the Cooperative Agreement.

(b) To meet the requirements of the Act, the Application for Federal Assistance shall certify that the State agency submitting the project is committed to its execution and that it has been reviewed by the appropriate State officials and is in compliance with other requirements of the Office of Management and Budget Circular No. A-95 (as revised and published in the FEDERAL REGISTER on January 13, 1976 (41 FR 2052)).

(c) The mutual obligations by the cooperating agencies will be set forth in a Grant-In-Aid Award executed between the State and the Director. The Grant-In-Aid Award shall cover the proposed financing and the work items described in the documents supporting it. The form and content for both the Application for Federal Assistance and the Grant-In-Aid Award are provided in the Federal Aid Handbook No. 22.

§ 225.8 Availability of funds.

Funds allocated to a State are available for obligation during the fiscal year for which they are allocated and until the close of the succeeding fiscal year. For the purpose of this section, obligation of allocated funds occurs when a Grant-In-Aid Award is signed by the Director.

§ 225.9 Payments.

The payment of the Federal share of costs incurred in the conduct of activities included under a Grant-In-Aid Award shall be in accordance with the Treasury Circular 1075.

(a) Federal payments under the Act shall not exceed 66⅔ percent of the program costs as stated in the agreement; except, the Federal share may be increased to 75 percent when two or more States having a common interest in one or more endangered or threatened resident species, the conservation of which may be enhanced by cooperation of such States, jointly enter into an agreement with the Director.

(b) The State share of program costs may be in the form of cash or in-kind contributions, including real property, subject to standards established by the Director as provided in Federal Management Circular 74-7.

(c) Payments of funds, including payment of such preliminary costs and expenses as may be incurred in connection with projects, shall not be made unless all documents that may be necessary or required in the administration of the Act shall have first been submitted to and approved by the Director. Payments shall be made for expenditures reported and certified by the State agency. Payments shall be made only to the State office or official designated by the State agency and authorized under the laws of the State to receive public funds for the State.

(d) Vouchers and forms provided by the Director and certified as therein prescribed, showing amounts expended and the amount of Federal Aid funds claimed to be due on account thereof, shall be submitted to the Director by the State agency.

§ 225.10 Assurances.

A State shall certify that it will comply with all applicable Federal laws, regulations, and requirements as they relate to the application, acceptance, and use of Federal funds for projects under the Act in accordance with Federal Management Circular 74-7.

§ 225.11 Submission of documents.

Documents required by section 6 of the Act or by these regulations shall be addressed to the Director, National Marine Fisheries Service, Washington, D.C. 20235.

§ 225.12 Project evaluation.

Any difference of opinion about a proposed project or appraised value of land to be acquired or any other related matter will be considered by qualified representatives of the Director and the State. Final determination in the event of continued disagreement rests with the Director.

§ 225.13 Contracts.

The State may use its own regulations in obtaining services provided they adhere to Federal laws and the requirements set forth in Federal Management Circular 74-7. The State is the responsible authority without recourse to the Director regarding settlement of contractual issues.

§ 225.14 Inspection.

Supervision of each project by the State shall include adequate and continuous inspection. The project will be subject to periodic Federal inspection.

PART 226—DESIGNATED CRITICAL HABITAT

Subpart A—Introduction

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226.1 Purpose of regulations.
226.2 Scope of regulations.

Subpart B–Critical Habitat for Marine Mammals—[Reserved]

Subpart C–Critical Habitat for Marine Fish—[Reserved]

Subpart D—Critical Habitat for Marine Reptiles

226.71 Sandy Point, St. Croix, U.S. Virgin Islands.

AUTHORITY: Endangered Species Act of 1973, sec. 7 Pub. L. 93-205, 16 U.S.C. 1536, 87 Stat. 884.

SOURCE: 44 FR 17711, Mar. 23, 1979, unless otherwise noted.

Subpart A—Introduction

§ 226.1 Purpose of regulations.

The regulations contained in this Part identify those habitats designated as critical under section 7 of the Endangered Species Act, as amended, by the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, for those endangered and threatened species under the jurisdiction of the Secretary of Commerce. The list of these species is found in 50 CFR 222.23(a) for endangered species and 50 CFR 227.4 for threatened species.

§ 226.2 Scope of regulations.

(a) The critical habitat designations contained in this part apply only to the endangered and threatened species listed in this part.

(b) Regulations implementing section 7 of the Endangered Species Act, as amended, are found in 50 CFR Part 402.

(c) The provisions in this part are in addition to, and not in lieu of other regulations of Parts 217-227 and 402 of this chapter.

Subpart B–Critical Habitat for Marine Mammals—[Reserved]

Subpart C–Critical Habitat for Marine Fish—[Reserved]

Subpart D—Critical Habitat for Marine Reptiles

§ 226.71 Sandy Point, St. Croix, U.S. Virgin Islands.

LEATHERBACK SEA TURTLE
(DERMOCHELYS CORIACEA)

The waters adjacent to Sandy Point, St. Croix, U.S. Virgin Islands, up to and inclusive of the waters from the hundred fathom curve shoreward to the level of mean high tide with boundaries at 17°42′12″ North and 64°50′00″ West.

PART 227—THREATENED FISH AND WILDLIFE

Subpart A—General Provisions

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227.1 Purpose.
227.2 Scope.
227.3 Definitions.
227.4 Enumeration of threatened species.

Subpart B—Threatened Marine Mammals—[Reserved]

Subpart C—Threatened Marine Fish—[Reserved]

Subpart D—Threatened Marine Reptiles

227.71 Prohibitions.
227.72 Exceptions to prohibitions.

AUTHORITY: Endangered Species Act of 1973 (as amended), Pub. L. 93-205, 16 U.S.C. 1531 et seq.

SOURCE: 43 FR 32809, July 28, 1978, unless otherwise noted.

Subpart A—General Provisions

§ 227.1 Purpose.

The regulations contained in this part identify the species, subspecies, or any other group of fish and wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature, under the jurisdiction of the Secretary of Commerce which have been determined to be threatened species under the Endangered Species Act of 1973 and provide for the conservation of such species by establishing rules and procedures to govern activities involving the species.

§ 227.2 Scope.

(a) The regulations contained in this part apply only to the threatened species enumerated in § 227.4.

(b) The provision of this part are in addition to, and not in lieu of other regulations of Parts 217-222 and Part 225 of this Chapter II which prescribe additional restrictions or conditions governing threatened species.

(c) Certain of the threatened fish or wildlife listed in 50 CFR 17.11 and enumerated in 50 CFR 227.4 are included in Appendix I or II to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The importation, exportation, and reexportation of such species are subject to additional regulations provided in Part 23, Chapter I (Title 50).

§ 227.3 Definitions.

In addition to the definitions contained in the Act, and in Parts 217 and 225 of this chapter, and unless the context otherwise requires, in this Part 227:

(a) "Act" means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531-1547;

(b) "Assistant Administrator" means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or his authorized delegate. The Assistant Administrator for Fisheries is in charge of the National Marine Fisheries Service;

(c) "Ongoing project(s)" means an activity for scientific purposes or to enhance the propagation or survival of such species which are not conducted in the course of a commercial activity initiated before the listing of the effected species;

(d) "Plastron" means the ventral part of the shell of a sea turtle consisting typically of nine symmetrically placed bones overlaid by horny plates; and

(e) "Sea Turtle(s)" means those sea turtle species enumerated in § 227.4 and any part(s), product(s), egg(s) or offspring thereof, or the dead body or part(s) thereof.

§ 227.4 Enumeration of threatened species.

The species listed as threatened under the Act which are under the jurisdiction of the Secretary of Commerce are:

(a) Green sea turtle (*Chelonia mydas*) except for those populations listed under 50 CFR 222.23(a).[1]

(b) Loggerhead sea turtle (*Caretta caretta*).[1]

(c) Pacific ridley sea turtle (*Lepidochelys olivacea*) except for those populations listed under 50 CFR 222.23(a).[1]

The effective date of the listing of the species in paragraphs (a), (b), and (c) of this section is September 6, 1978.

[43 FR 32809, July 18, 1978, as amended at 45 FR 29055, May 1, 1980]

Subpart B–Threatened Marine Mammals—[Reserved]

Subpart C–Threatened Marine Fish—[Reserved]

Subpart D—Threatened Marine Reptiles

§ 227.71 Prohibitions.

Except as provided in § 227.72 it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed in any of the following acts with respect to any species enumerated in § 227.4:

(a) Import any such species into, or export any such species from, the United States;

(b) Take any such species within the United States or the territorial sea of the United States;

(c) Take any such species upon the high seas;

(d) Possess, sell, deliver, carry, transport, or ship by any means whatsoever, any such species taken in violation of the prohibitions in paragraphs (b) and (c) of this section;

(e) Deliver, receive, carry, transport, or ship in foreign commerce by any means whatsoever, and in the course of a commercial activity, any such species;

(f) Sell, or offer for sale, in foreign commerce any such species;

(g) Deliver, receive, carry, transport, or ship in interstate commerce, by any means whatsoever, and in the course of commercial activity; provided that this paragraph (g) shall not apply to any such species taken prior to the effective date of the listing of the species for 1 year after such listing; or

(h) Sell, or offer for sale, in interstate commerce any such species; provided that this paragraph (h) shall not apply to any such species taken prior to the effective date of the listing of the species for 1 year after such listing.

§ 227.72 Exceptions to prohibitions.

(a) *Scientific, propagation, or survival permits.* (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under § 227.71 for scientific purposes or to enhance the propagation or survival of such species. Applications for these permits are subject to the provisions of Part 220 of this Chapter II.

(2) Ongoing scientific, propagation, or survival projects, which would otherwise be prohibited by § 227.71 may continue without a permit until an application for a permit has been denied or 90 days from the effective date of the listing of the effected species, whichever comes first. If a permit has not been denied, ongoing projects may

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[1] Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, jurisdiction for sea turtles is limited to turtles while in the water.

continue beyond this 90-day period provided that the individual responsible for such project(s) has applied for a permit and receives a letter from the Assistant Administrator stating that the application is complete and sufficient for processing within the 90-day period. Projects not receiving a permit or letter indicating sufficiency by the 90th day must cease. Within 30 days of receipt of an application, the Assistant Administrator will determine the completeness and sufficiency of the application for processing. If an application is deemed complete and sufficient for processing, a permit will be issued or denied within the next 90 days beginning with the date of the letter informing the applicant that the application is sufficient. Approved projects shall continue in accordance with the conditions of the permit.

(b) *Permits for Zoological Exhibition or Educational Purposes.* The Assistant Administrator may issue permits authorizing activities which would be otherwise prohibited under § 227.71 for zoological exhibition or educational purposes. Applications for these permits are subject to the provisions of Part 220 of this Chapter II.

(c) *Exceptions for injured, dead, or stranded specimens.* If any member of any threatened species listed in § 227.4 is found injured, dead, or stranded, any agent or employee of the National Marine Fisheries Service, the Fish and Wildlife Service, the U.S. Coast Guard, or any other Federal land or water management agency, or any agent or employee of a State agency responsible for fish and wildlife who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take such specimens without a permit if such taking is necessary to aid a sick, injured, or stranded specimen or dispose of a dead specimen or salvage a dead specimen which may be useful for scientific study. Wherever possible, live specimens shall be returned to their aquatic environment as soon as possible. Every action shall be reported in writing to the Assistant Administrator within 30 days, and reports of further occurrence shall be made as deemed appropriate by the Assistant Administrator until the specimen is either returned to its environment or disposed of. Reports shall be mailed by registered or certified mail, return receipt requested, to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235, and shall contain the following information:

(1) Name and position of the official or employee involved;

(2) Description of the specimen(s) involved;

(3) Date and location of disposal;

(4) Circumstances requiring the action;

(5) Method of disposal;

(6) Disposition of the specimen(s), including, where the specimen(s) has been retained in captivity, a description of the place and means of confinement, and the measures taken for its maintenance and care; and

(7) Such other information as the Assistant Administrator may require.

(d) *Exception for research or conservation.* Any employee or agent of the National Marine Fisheries Service, the Fish and Wildlife Service, or a State fish and wildlife agency operating a conservation program pursuant to the terms of a Cooperative Agreement with the National Marine Fisheries Service or the Fish and Wildlife Service in accordance with section 6(c) of the Act, designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take any threatened species to carry out scientific research or conservation programs. All such takings shall be reported within 30 days of the taking to the Assistant Administrator who may request additional reports of the taking and research at his discretion.

(e) *Exception for incidental taking*—(1) *General.* Except as provided in paragraphs (e)(2) and (e)(3) of this section, the incidental taking of any member of any species listed in § 227.4 during fishing or scientific research activities not directed toward such members of such species is allowed under the following conditions:

(i) Any specimen so taken must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures:

(A) Sea turtles that are dead or actively moving must be released over the stern of the boat. In addition, they must be released only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose or inactive but not dead by: (*1*) placing the turtle on its back (carapace) and pumping its breastplate (plastron) with hand or foot, or (*2*) placing the turtle on its breastplate (plastron) and elevating its hindquarter several inches for a period of one up to twenty-four hours. The amount of elevation depends on the size of the turtle; greater elevations are needed for larger turtles.

Sea turtles being resuscitated must be shaded and kept wet or moist. Those that revive and become active must be released over the stern of the boat only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels. Similarly, sea turtles that fail to move within several hours (up to twenty-four if possible) must be returned to the water in the same manner.

(ii) Any specimen so taken must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

(2) *Restricted Fishing Areas.* [Reserved]

(3) *Gear.* [Reserved]

(f) *Subsistence.* The prohibition in § 227.71(b) shall not apply with respect to the taking of any member of the species of green sea turtle (*Chelonia mydas*) in waters seaward of mean low tide for personal consumption by residents of the Trust Territory of the Pacific Islands if such taking is customary, traditional and necessary for the sustenance of such resident and his immediate family. Sea turtles so taken cannot be transferred to non-residents or sold.

(The Endangered Species Act of 1973, as amended (16 U.S.C. 1533(d)))

[43 FR 32809, July 28, 1978, as amended at 46 FR 43977, Sept. 2, 1981]

SUBCHAPTER D—WHALING

PART 230—WHALING PROVISIONS

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Authority: Sec. 12, 64 Stat. 425; 16 U.S.C. 916j, unless otherwise noted.

Source: 33 FR 5953, Apr. 18, 1968, unless otherwise noted.

See also 45 FR 22949, Apr. 4, 1980.

Cross Reference: For the regulations of the International Whaling Commission, see Part 351 of this title.

Definitions

§ 230.1 Factoryship.

The word "factoryship" means a vessel in which or on which whales are treated or processed, whether wholly or in part.

§ 230.2 Land station.

The words "land station" mean a factory on the land at which whales are treated or processed, whether wholly or in part.

§ 230.3 Secondary processing land station.

The words "secondary processing land station" mean a factory on the land which receives from a land station for further processing any or all of those parts of whales which are required, by paragraph 12 of the Schedule of the Whaling Convention of 1946, as amended (§ 351.12 of this title), to be processed by boiling or otherwise.

§ 230.4 Whale catcher.

The words "whale catcher" mean a vessel used for the purpose of hunting, killing, taking, towing, holding on to, or scouting for whales.

§ 230.5 Whales.

(a) "Baleen whale" means any whale which has baleen or whale bone in the mouth, i.e., any whale other than a toothed whale.

(b) "Blue whale" (Balaenoptera or Sibbaldus musculus) means any whale known by the name of blue whale, Sibbald's rorqual, or sulphur bottom.

(c) "Fin whale" (Balaenoptera physalus) means any whale known by the name of common finback, common rorqual, finback, finner, fin whale, herring whale, razorback, or true fin whale.

(d) "Gray whale" (*Rhachianectes glaucus* or *Eschrichtius gibbosus*) means any whale known by the name of gray whale, California gray, devil fish, hard head, mussel digger, gray back, or rip sack.

(e) "Humpback whale" (*Megaptera nodosa* or *novaeangliae*) means any whale known by the name of bunch, humpback, humpback whale, humpbacked whale, hump whale, or hunchbacked whale.

(f) "Minke whale" (*Balaenoptera acutorostrata, B. Davidsoni, B. huttoni*) means any whale known by the name of lesser rorqual, little piked whale, minke whale, pike-headed whale, or sharp-headed finner.

(g) "Right whale" (*Balaena mysticetus, Eubalaena glacialis, E. australis,* etc.; *Neobalaena marginata*) means any whale known by the name of Atlantic right whale, Arctic right whale, Biscayan right whale, bowhead, great polar whale, Greenland right whale, Greenland whale, Nordkaper, North Atlantic right whale, North Cape whale, Pacific right whale, pigmy right whale, Southern pigmy right whale, or Southern right whale.

(h) "Sei whale" (*Balaenoptera borealis*) means any whale known by the name of sei whale, Rudolphi's rorqual, pollack whale, or coalfish whale and shall be taken to include Byrde's whale (*B. brydei*).

(i) "Sperm whale" (*Physeter catodon*) means any whale known by the name of sperm whale, spermacet whale, cachalot, or pot whale.

(j) "Toothed whale" means any whale which has teeth in the jaws.

§ 230.6 Whale products.

The words "whale products" mean any unprocessed part of a whale and blubber, meat, bones, whale oil, sperm oil, spermaceti, meal, and baleen.

LICENSES AND SCIENTIFIC PERMITS

§ 230.10 Licenses required to engage in whaling.

(a) No person shall engage in the taking or processing of any whales without first having obtained an appropriate license.

(b) No permit or license shall be issued except as provided in § 230.13 and §§ 230.70 through 230.77. Licenses issued under § 230.73 shall be governed solely by the requirements of §§ 230.70 through 230.77.

[36 FR 7432, Apr. 20, 1971, as amended at 45 FR 20488, Mar. 28, 1980]

§ 230.11 Applications for licenses.

(a) Applications for licenses to engage in the taking or processing of whales of the species listed in § 230.10, shall be submitted to the Bureau of Commercial Fisheries through the Regional Director, Pacific Northwest Region (Region 1), Bureau of Commercial Fisheries, 6116 Arcade Building, 1319 Second Avenue, Seattle, Wash. 98101. Such applications shall be accompanied by the affidavit or affidavits prescribed in sections 6(d) and (e) of the Whaling Convention Act of 1949 and by a check or U.S. Postal Money Order payable to the Bureau of Commercial Fisheries in the appropriate amount as prescribed by section 6(b) of the Whaling Convention Act of 1949 and as set out in § 230.12.

(b) Applicants for a license to operate a whale catcher must furnish by means of a letter to the Regional Director information specifying the names and addresses of the owner and operator of the vessel, the name, official number, and home port of the vessel, its length, beam, and draft, its gross and net tonnage, the horsepower of its engine, its maximum speed, the number of its crew members, and the basis of compensation for its gunners and crew, including the basis on which bonuses are awarded.

(c) Applicants for a license to operate a factoryship must furnish by means of a letter to the Regional Director information specifying the names and addresses of the owner and operator of the vessel, the name, official number and home port of the vessel, its length, beam, and draft, its gross and net tonnage, the horsepower of its engine, its maximum speed, the number of its crew, including whalers, the basis of compensation for its crew and whalers including the basis on which bonuses are awarded, and a list of its processing and manufacturing equipment.

(d) Applicants for a license to operate a land station must furnish by means of a letter to the Regional Director, information specifying the names and addresses of the owner and operator of the land station, the number of its employees, the basis of their compensation, including the basis on which bonuses are awarded, and a list of its processing and manufacturing equipment.

§ 230.12 Schedule of fees.

The following licenses and fees shall be required for each calendar year or any fraction thereof and shall be nontransferable:

(a) Land station licenses for primary processing of whales, $250.

(b) Land station license for secondary processing of parts of whales delivered to it by a land station licensed as a primary processor, $100.

(c) Factoryship license for primary processing of whales delivered by whale catchers, $250.

(d) License for any vessel used exclusively for transporting whale products from a factoryship to a port during the whaling season, $100.

(e) Whale catcher license, $100.

(f) No license fee shall be refunded by reason of the failure of any person to whom a license has been issued to utilize the facility in whaling for which such license was issued.

§ 230.13 Applications for scientific permits.

Applications for scientific permits to take, tag, or study whales for scientific investigations shall be submitted to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, D.C. 20240. Scientific permits will be issued free of charge. Applicants for a scientific permit should also include with their application a statement of the specific objectives and operational procedures of their proposed scientific investigation. Upon completion of their research, a report of the results of such research, in triplicate, shall be submitted to the Director of the Bureau of Commercial Fisheries for transmittal to the International Whaling Commission in accordance with paragraph 3 of Article VIII of the International Convention for Regulation of Whaling of 1946.

CLOSED SEASONS

§ 230.20 Whale catchers attached to land stations taking baleen whales.

(a) It is forbidden to use a whale catcher attached to a land station for the purpose of taking or killing any baleen whales except during the period April 15 to October 15, both days inclusive: *Provided,* That it is forbidden to kill or attempt to kill blue whales, by any means, in the following areas:

(1) The North Atlantic Ocean for 3 years ending on February 24, 1973.

(2) The North Pacific Ocean and its dependent waters north of the Equator for 5 years beginning with the 1971 season.

(3) In the waters south of the Equator: *Provided further,* That, it is forbidden to kill or attempt to kill humpback whales, by any means, in the following areas:

(4) In the North Atlantic Ocean for a period ending on November 8, 1972.

(5) In the North Pacific Ocean and its dependent waters north of the Equator for 3 years beginning with the 1971 season.

(6) In the waters south of the Equator.

[33 FR 5953, Apr. 18, 1968, as amended at 36 FR 7432, Apr. 20, 1971]

§ 230.21 Whale catchers attached to land stations taking sperm whales.

It is forbidden to use a whale catcher attached to a land station for the purpose of taking or killing sperm whales except during the period April 1, to November 30 following, both days inclusive.

§ 230.22 Whale catchers attached to factoryships taking sperm whales.

It is forbidden to use a factoryship or whale catcher attached thereto for the purpose of taking or treating sperm whales in the waters between 40° south latitude and 40° north latitude. For all other waters, it is forbidden to use factoryships or whale catchers attached thereto for the purpose of taking or treating sperm whales except during the period April 15 to December 15 following both days inclusive.

[36 FR 7432, Apr. 20, 1971]

CATCH QUOTAS

§ 230.25 Fin and sei whale quotas for the North Pacific.

Beginning with the 1971 season for taking baleen whales, it is forbidden for persons or vessels under the jurisdiction of the United States to take more than 40 fin whales and 51 sei whales from the waters of the North Pacific Ocean. The fin whale quota may be converted to sei and Bryde's whales combined, or vice versa, in terms of the formula as defined in paragraph 8(b) of the Schedule of the Convention: *Provided,* That the total catch of one or the other species does not exceed the level which is 10 percent (10%) above the quota for each species as prescribed above.

[36 FR 7432, Apr. 20, 1971]

§ 230.26 Sperm whale quota for the North Pacific Ocean.

Beginning with the 1971 season for taking sperm whales, it is forbidden for persons or vessels under the jurisdiction of the United States to take more than 75 sperm whales from the waters of the North Pacific Ocean and dependent waters.

[36 FR 7432, Apr. 20, 1971]

RECORDS AND REPORTS[1]

§ 230.30 Records to be maintained on whale catchers.

There shall be maintained on each whale catcher a suitable log book or other record in which shall be recorded the following information, and such record shall be available for inspection by any person authorized by law or by this part to act as an inspector or enforcement officer, who shall be permitted to abstract therefrom such information as may be needed by the U.S. Government:

(a) The date and hour of the killing or capture of each whale;

(b) The point in latitude and longitude where each whale was killed or captured;

(c) The species of each whale killed or captured;

(d) The time of delivery of each whale to the land station or factoryship;

(e) Data specified under paragraphs (a), (b), and (c) of this section for each whale killed and later lost, or for some other reason not delivered to a factoryship or land station for processing, with an account of the circumstances surrounding such loss or nondelivery; and

(f) Any observations on migration of whales and on location of calving grounds.

§ 230.31 Records to be maintained on factoryships and at land stations.

(a) There shall be maintained in duplicate on board each factoryship and at each land station a detailed record of all whales received and processed as follows:

(1) Serial number of the whale (begin with number 1 on January 1 of each year).

(2) Species of the whale.

(3) Date and time killed and date and time received by the factoryship or land station.

(4) Sex of the whale.

(5) Length of the whale. (Whales must be measured when at rest on deck or platform, as accurately as possible by means of a steel tape measure fitted at the zero end with a spiked handle which can be stuck into the deck planking abreast of one end of the whale. The tape measure shall be

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[1] The recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

stretched in a straight line parallel with the whale's body and read abreast the other end of the whale. The ends of the whale, for measurement purposes, shall be the point of the upper jaw and the notch between the tail flukes. Measurements, after being accurately read on the tape measure, shall be logged to the nearest foot, that is to say, any whale between 75 feet 6 inches and 76 feet 6 inches shall be logged as 76 feet, and any whale between 76 feet 6 inches and 77 feet 6 inches shall be logged as 77 feet. The measurement of any whale which falls on an exact half foot shall be logged at the next half foot, e.g., 76 feet 6 inches precisely shall be logged at 77 feet.)

(6) Sex of fetus if present.

(7) Length of fetus in feet and inches.

(8) A description of the stomach contents of the whale.

(9) Name of whale catcher which took the whale.

(10) Name of gunner who killed the whale.

(11) The exact location in which the whale was taken, stated in degrees and minutes of latitude and longitude.

(12) Under "Remarks" enter, if the whale is a female, whether lactating or milk-filled as well as abnormalities or peculiarities concerning the whale and the character and quantity of any portion of the whale transferred to a secondary processing plant.

(b) Each sheet of such reports shall be verified or approved by a person authorized by law or by this part to act as inspector or enforcement officer, and the said duplicate reports for each calendar year shall be submitted to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, D.C. 20240, within 30 days after the end of each calendar year.

§ 230.32 Records to be maintained at secondary processing land stations.

(a) There shall be maintained by all licensed secondary processing land stations receiving from land stations parts of whales for further processing a suitable ledger or book in which the following information shall be recorded, and such records shall be available for inspection by any authorized person:

(1) The kind and quantity of parts of whales received.

(2) The date of receipt thereof.

(3) The kind and quantity of products derived therefrom.

(b) Said ledger or book or certified true copies thereof shall be submitted in duplicate to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, D.C. 20240, within 30 days after the end of each calendar year.

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§ 230.33 Report on employment, craft, and products of whaling operations.

The person or persons responsible for the operation of every factoryship, land station, and secondary processing land station shall annually submit in duplicate to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, D.C. 20240, within 30 days after the end of each calendar year, a report on employment, craft, and products, which shall show the number of persons employed, the nature of the task which each performs and the manner in which each is remunerated; the number and type of vessels and aircraft operated, including separate totals for surface vessels and aircraft; specifying, in the case of surface vessels, the average length and horsepower of whale catchers and the gross tonnage and horsepower of other vessels; and the quantity and type of products manufactured, including semiprocessed products delivered to secondary processing land stations. Such reports shall be subscribed and sworn to by the person or persons responsible for the operation of said factoryships, land station and secondary processing land station before a notary public or a person authorized by law or by this part to act as inspector or enforcement officer.

§ 230.34 Records retention period.

The record required to be maintained under the regulations of this part shall be retained by the person or persons responsible for their preparation and maintenance for a period of 6 months following the end of the calendar year to which such records apply.

SALVAGE OF UNCLAIMED WHALES

§ 230.40 No processing license required.

No license shall be required for the salvage and processing of any "dauhval" or dead whale found upon a beach or stranded in shallow water, or of any unclaimed dead whale found floating at sea.

§ 230.41 Reporting of salvage of dead whales required.

(a) Any person or persons salvaging and/or processing any dead whale of any of the species enumerated in § 230.5 shall submit a report in writing to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, D.C. 20240, no later than within 30 days after the end of the then current calendar year.

(b) Such report shall show the date and exact locality in which such dead whale was found, its species and length, the disposition made of the whale, the firm utilizing or processing it, the products derived therefrom, and any other relevant facts.

MOLESTING OR UNAUTHORIZED INTERFERENCE WITH WHALES

§ 230.50 Molesting of whales prohibited.

The chasing, molesting, exciting, or interfering with, through the use of firearms or by any other manner or means, of any whale of the species listed in § 230.5 or of any other species protected by the provisions of the International Convention for the Regulation of Whaling of 1946, except for the purpose of hunting, killing, taking, towing, holding on to or scouting for whales in accordance with the provisions of the Convention, the regulations of the International Whaling Commission, and the regulations in this part, is prohibited. Persons violating this section shall upon arrest and conviction, be subject to the penalties imposed by the Whaling Convention Act of 1949.

INSPECTION AND ENFORCEMENT

§ 230.60 Fish and Wildlife Service employees designated as enforcement officers.

Any employee of the Fish and Wildlife Service duly appointed and authorized to enforce Federal laws and regulations administered by the Fish and Wildlife Service is authorized and empowered to act as a law enforcement officer for the purposes set forth in the Whaling Convention Act of 1949.

§ 230.61 State officers designated as enforcement officers.

Any employee of a State government who has been duly designated by the Director, Bureau of Commercial Fisheries, Department of the Interior, with the consent of the State government concerned, is authorized and empowered to act as a Federal law enforcement officer for the purposes set forth in the Whaling Convention Act of 1949.

§ 230.62 Disposal of perishable seized whales and whale products.

Any whales or whale products which are seized pursuant to the Whaling Convention Act of 1949 and which are deemed to be perishable, shall be preserved, processed, and sold as soon as possible under the direction and control of the Bureau of Commercial Fisheries. All proceeds from such sales shall be placed in escrow in any bank or in any manner as the Secretary of the Interior may direct pending the outcome of litigation.

SUBSISTENCE

AUTHORITY: Whaling Convention Act (WCA 16 U.S.C. 916a-1).

SOURCE: Sections 230.70—230.77 appear at 45 FR 20488, Mar. 28, 1980, unless otherwise noted.

§ 230.70 General.

The provisions of §§ 230.70 through 230.77 govern subsistence whaling for bowhead whales.

§ 230.71 Definitions.

As used in §§ 230.70 through 230.77 of this Part 230:

(a) "Assistant Administrator" means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration;

(b) "Bowhead" means a whale of the Bering Sea stock of bowhead whales, *Balaena mysticetus;*

(c) "Calf" means any bowhead which is less than 21 feet in length as measured from the point of the upper jaw and the notch between the tail flukes;

(d) "Landing" means bringing a bowhead or any parts thereof onto the ice or land in the course of whaling operations;

(e) "Whaling captain" or "captain" means any Indian, Aleut, or Eskimo domiciled in a whaling village who is in charge of a vessel and a whaling crew;

(f) "Stinker" means a dead unclaimed bowhead found upon a beach, stranded in shallow water, or floating at sea;

(g) "Strike" means hitting a bowhead with a harpoon, lance, or explosive dart;

(h) "Whaling" means the hunting, striking, harassing, killing, or landing of bowheads, but does not include the salvage or processing of any stinker;

(i) "Whaling crew" means those persons under the control of a captain, who collectively participate as a unit in whaling;

(j) "Whaling village" means any of the villages of Gambell, Savoonga, Wales, Kivalina, Point Hope, Wainwright, Barrow, Nuigsut, and Kaktovik in the State of Alaska; and

(k) "Wasteful manner" means a method of whaling which is not likely to result in the landing of a struck bowhead or which does not include all reasonable efforts to retrieve the bowhead.

§ 230.72 Prohibited acts.

(a) No person shall engage in whaling except a whaling captain licensed pursuant to § 230.73 or a member of a whaling crew under the control of a captain.

(b) No whaling captain shall engage in whaling for any calf or any bowhead whale accompanied by a calf.

(c) No whaling captain shall engage in whaling in a wasteful manner.

(d) No whaling captain shall engage in whaling without an adequate crew or without adequate supplies and equipment.

(e) No person may receive money for participation in native subsistence whaling.

(f) No whaling captain shall continue to whale after, (1) the quota set forth in § 230.74 for his village of domicile is reached, or (2) the license under which he is whaling is suspended as provided in § 230.73(b), or (3) the Assistant Administrator has declared that the whaling season is closed pursuant to § 230.74(c).

(g) No whaling captain shall claim domicile in more than one whaling village.

(h) No person may salvage a stinker without complying with the provisions of § 230.75.

(i) No whaling captain shall engage in whaling with a harpoon, lance, or explosive dart which does not bear a permanent distinctive mark identifying the captain as the owner thereof.

§ 230.73 Licenses.

(a) A license is hereby issued to whaling captains.

(b) The Assistant Administrator may suspend the license of any whaling captain who fails to comply with these regulations.

§ 230.74 Quotas.

(a) During the calendar year 1980, the quota for bowheads is allocated among whaling villages as follows:

(1) Savoonga—2 whales landed or 3 struck, whichever occurs first;

(2) Gambell—2 whales landed or 3 struck, whichever occurs first;

(3) Wales—1 whale landed or 1 struck, whichever occurs first;

(4) Kivalina—1 whale landed or 2 struck, whichever occurs first;

(5) Pt. Hope—2 whales landed or 3 struck, whichever occurs first;

(6) Wainwright—2 whales landed or 3 struck, whichever occurs first;

(7) Barrow—5 whales landed or 7 struck, whichever occurs first;

(8) Kaktovik—2 whales landed or 3 struck, whichever occurs first;

(9) Nuigsut—1 whale landed or 1 struck, whichever occurs first;

(b) When the number of bowheads struck or landed by whaling captains domiciled in a whaling village equals the quota for such whaling village as set forth in paragraph (a) of this section, whaling by all captains domiciled in that whaling village shall cease. All license holders shall be notified promptly by the Assistant Administrator for Fisheries using all reasonable means of communication. Licenses held by whaling captains domiciled in a whaling village which has reached its quota shall not be valid after the quota for that whaling village has been reached.

(c) The Assistant Administrator for Fisheries shall monitor the bowhead whale hunt and keep tally of the number of bowheads landed and struck. When the number of bowhead whales landed or struck reaches the sum total of the village allocations set forth in § 230.74(a), the Assistant Administrator for Fisheries may declare that the whaling season is closed and there shall be no further whaling during the calendar year 1980. Closure shall become effective upon receipt by the FEDERAL REGISTER of notice by the Assistant Administrator for Fisheries that the season has been closed pursuant to this regulation.

(d) If for any reason the landing or struck quota for whaling villages is not reached, the part of the quota which remains may be reassigned by the Assistant Administrator to a second whaling village: Provided, that if any other whaling village has exceeded its quota, the Assistant Administrator shall not reassign the quota if he determines that it is likely to result in the total number of whales landed or struck exceeding the bowhead quota then in effect under the Schedule of the International Convention for the Regulation of Whaling. In making such reassignment, the Assistant Administrator shall consult with representatives of as many whaling villages as time reasonably permits.

§ 230.75 Salvage of stinkers.

(a) Any person salvaging a stinker shall submit to the Assistant Administrator or his representative an oral or written report describing the circumstances of the salvage within 12 hours of such salvage. He shall provide promptly to the Assistant Administrator or his representative each harpoon, lance, or explosive dart found in or attached to the stinker. The device shall be returned to the owner thereof promptly unless it is retained as evidence of a possible violation.

(b) There shall be a rebuttable presumption that a stinker has been struck by the captain whose mark appears on the harpoon, lance, or explosive dart found in or attached thereto, and, if no strike has been reported by such captain, such strike shall be deemed to have occurred at the time of recovery of the device.

§ 230.76 Reporting by whaling captains.

(a) A representative of the Assistant Administrator may request each whaling captain licensed pursuant to § 230.73 to provide written statement of his name and village of domicile and a description of the distinctive marking to be placed on each harpoon, lance and explosive dart. Representatives of the Assistant Administrator may provide each captain with a form approved by the Assistant Administrator to facilitate reporting under this paragraph.

(b) Each whaling captain shall provide to appropriate representatives, on request, an oral or written report of whaling activities including but not limited to the striking, attempted striking, or landing or a bowhead whale and where possible, specimens from landed whales. The Assistant Administrator is authorized to provide technological assistance to facilitate prompt reporting and collection of specimens from landed whales, including but not limited to ovaries, ear plugs, and baleen plates. The report shall include at least the following information:

(1) The number, dates, and locations of each strike, attempted strike, or landing;

(2) The length (as measured from the point of the upper jaw and the notch between the tail flukes), the extreme width of the flukes, and the sex of the bowhead(s) landed;

(3) The length and sex of a fetus, if present in a landed bowhead whale;

(4) An explanation of circumstances associated with the striking or attempted striking of any bowhead whale not landed; and

(5) The number of bowhead whales sighted by the whaling captain or any member of the whaling crew.

§ 230.77 Penalties.

Any person who whales in contravention of these regulations, or violates any other provision of the Whaling Convention Act shall be subject to the penalties set forth in 16 U.S.C. 916e and 916f, and any other penalties provide by law.

SUBCHAPTER E—NORTHWEST ATLANTIC COMMERCIAL FISHERIES

PART 246—TRANSPORTATION OF WILDLIFE

Sec.
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AUTHORITY: 18 U.S.C. 43, Reorganization Plan No. 4 of 1970 (35 FR 15627).

SOURCE: 41 FR 31825, July 30, 1976, unless otherwise noted.

§ 246.1 Purpose of regulations.

The regulations contained in this part provide uniform rules and procedures for the assessment of civil penalties in connection with violations of the so-called Lacey Act as it relates to those forms of wildlife under the jurisdiction of the Department of Commerce. For regulations regarding other forms of wildlife see Department of the Interior regulations at Parts 11 and 12 of this title.

§ 246.2 Definitions.

(a) "Act" means the provisions of section 43 of Title 18, U.S. Code.

(b) "Authorized Official" means Enforcement Agents of the National Marine Fisheries Service.

(c) "Director" means the Director of the National Marine Fisheries Service or his delegate.

(d) "Person" means any individual, firm, corporation, association, or partnership.

(e) "Respondent" means a person against whom an action is brought under the Act.

(f) "Secretary" means the Secretary of Commerce pursuant to Reorganization Plan No. 4 of 1970 (84 Stat. 2090) or his delegate.

(g) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

(h) "Taken" means captured, killed, collected or otherwise possessed.

(i) "Wildlife" means any animal over which the Secretary of Commerce exercises jurisdiction, including, but not limited to, marine mammals of the order Cetacea or Pinipedia, other than walruses, any sea turtle of the families Cheloniidae and Dermochelidae, and any mollusk or crustacean or any part, egg or offspring thereof; the dead body or parts thereof; or any product thereof.

§ 246.3 Prohibitions.

Subsections (a) and (b) of the Act provide that:

(a) Any person who—

(1) Delivers, carries, transports, or ships, by any means whatsoever, or causes to be delivered, carried, transported, or shipped for commercial or noncommercial purposes or sells or causes to be sold any wildlife taken, transported, or sold in any manner in violation of any Act of Congress or regulation issued thereunder, or

(2) Delivers, carries, transports, or ships, by any means whatever, or causes to be delivered, carried, transported, or shipped for commercial or noncommercial purposes or sells or causes to be sold in interstate or foreign commerce any wildlife, taken, transported, or sold in any manner in violation of any law or regulation of any State or foreign country.

(b) Any person who—

(1) Sells or causes to be sold any products manufactured, made, or processed from any wildlife taken, transported, or sold in any manner in violation of any Act of Congress or regulation issued thereunder, or

(2) Sells or causes to be sold in interstate or foreign commerce any products manufactured, made, or processed from any wildlife taken, transported, or sold in any manner in violation of any law or regulation of a State or a foreign country, or

(3) Having purchased or received wildlife imported from any foreign commerce or shipped, transported, or carried in interstate commerce, makes or causes to be made any false record, account, label, or identification thereof, or

(4) Receives, acquires, or purchases for commercial or noncommercial purposes any wildlife—

(i) Taken, transported, or sold in violation of any law or regulation of any State or foreign country and delivered, carried, transported, or shipped by any means or method in interstate or foreign commerce, or

(ii) Taken, transported, or sold in violation of any Act of Congress or regulation issued thereunder * * * shall be subject to the penalties prescribed * * *

§ 246.4 Enforcement.

(a) Any authorized official or any officer of the customs is authorized to execute any warrant to search for and seize any wildlife, product, property, records, or item used or possessed in violation of the Act with respect to which a civil penalty under § 246.3 may be assessed.

(b) The Director shall notify the owner or consignee of any wildlife, product, property, or item so seized as soon as practicable following such seizure.

(c) Such wildlife, product, property, or item so seized shall be held by such authorized official until proceedings involving the imposition of a civil penalty are completed.

(d) In lieu of holding such wildlife, product, property, or item so seized, the Director may, in his sole discretion, permit such person to post a bond or other surety satisfactory to the Director.

§ 246.5 Penalties.

Any person who knowingly violates or who, in the exercise of due care, should know that he is violating any provision of subsection (a) or (b) of the Act (see § 246.3) may be assessed a civil penalty by the Director of not more than $5,000 for each violation. Each violation shall constitute a separate offense. Such person shall be given notice and opportunity for a hearing with respect to such violation. Such hearing shall follow the procedures set forth in §§ 246.6-246.16.

§ 246.6 Notice of proposed assessment; opportunity for hearing.

(a) Prior to the assessment of a civil penalty pursuant to § 246.5 a notice of proposed assessment issued by the Director shall be served personally or by registered or certified mail, return receipt requested, upon the respondent. The notice shall contain:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provisions of the Act;

(3) The amount of penalty proposed to be assessed. The notice shall inform the respondent that he has 20 days from receipt of the notice in which to request a hearing or to waive it. The request or waiver shall be in writing and addressed to the Director, National Marine Fisheries Service U.S. Department of Commerce, Washington, D.C. 20235. The notice shall further inform the respondent that if he does not respond to the notice within the 20 days allowed, he shall be deemed to have waived his right to a hearing and and to have consented to the making of an assessment without a hearing.

(b) With his request for a hearing or with his written waiver of a hearing, the respondent may submit objections to the proposed assessment. He may deny the existence of the violation or ask that no penalty be assessed or that the amount be reduced. The respondent must set forth in full all facts supporting his denial of the alleged violation or his request for relief.

§ 246.7 Waiver of hearing; assessment of penalty.

(a) If a written waiver of a hearing is timely made, or if a hearing is deemed to have been waived as provided in §246.6(a), the Director shall proceed either to make an assessment of a civil penalty or to rescind the proposed assessment taking into consideration such showing as may have been made by respondent pursuant to § 246.6(b). Such action shall become the final administrative decision of the Secretary when rendered and any civil penalty assessed shall be collected in accordance with § 246.16. Notice of such final decision shall be promptly sent to the respondent by registered or certified mail, return receipt requested.

(b) If, despite the waiver of a hearing, the Director believes that there are material facts at issue which cannot otherwise be satisfactorily resolved, he may refer the case to an administrative law judge as provided in §246.8.

§ 246.8 Appointment of Administrative Law Judge and agency representative; notice of hearing.

(a) If a written request for a hearing has been timely made, or the Director determines, pursuant to § 246.7(b), that a hearing should be held, the case shall be assigned to an administrative law judge appointed pursuant to 5 U.S.C. 3105. Written notice of the assignment shall promptly be given to the respondent by the Director, together with the name and address of the person who will present evidence on behalf of the Secretary at the hearing (the agency representative), and thereafter all pleadings and other documents shall be filed directly with the administrative law judge, with a copy served on the agency representative or the respondent as the case may be.

(b) The Director shall deliver to the administrative law judge a copy of the notice of proposed assessment, and response to the respondent thereto, and other materials deemed relevant to the case and shall furnish to the respondent a copy of any such materials not already in respondent's possession.

(c) The administrative law judge shall promptly cause to be served on the parties notice of the time and place of the hearing, which shall not be less than ten (10) days after service of the notice of hearing except in extraordinary circumstances.

§ 246.9 Failure to appear; official transcript; record for decision.

(a) If the respondent fails to appear at the hearing, he will be deemed to have consented to a decision being rendered on the record made at the hearing.

(b) The Director shall provide the services of an official reporter who shall make the only official transcript of the proceedings. Copies of the official transcript may be obtained from the official reporter upon payment of the charges therefor.

(c) The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision.

§ 246.10 Duties and powers of the Administrative Law Judge.

(a) It shall be the duty of the administrative law judge to inquire fully into the facts as they relate to the matter before him. Upon assignment to him and before submission of the case, pursuant to § 246.12, to the Secretary, the administrative law judge shall have authority to:

(1) Rule on offers of proof and receive relevant evidence;

(2) Take or cause depositions to be taken whenever the ends of justice would be served thereby;

(3) Regulate the course of the hearing and, if appropriate, exclude from the hearings persons who engage in misconduct, and strike all testimony of witnesses refusing to answer any questions ruled to be proper which are related to such questions;

(4) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon his own motion;

(5) Dispose of procedural requests, motions or similar matters and order hearings reopened prior to issuance of the administrative law judge's report and recommendations;

(6) Grant requests for appearance of witnesses or production of documents;

(7) Limit lines of questioning or testimony which are immaterial, irrelevant, or unduly repetitious;

(8) Examine and cross-examine witnesses and introduce into the record documentary or other evidence;

(9) Request the parties at any time during the hearing to state their respective positions concerning any issue

in the case or theory in support thereof;

(10) Continue, at his discretion, the hearing from day-to-day, or adjourn it to a later date or to a different place;

(11) Take official notice of any matters not appearing in evidence in the record which are among the traditional matters of judicial notice; or of technical or scientific facts within the general or specialized knowledge of the Department of Commerce as an expert body; or of a document required to be filed with or published by a duly constituted Government body: *Provided,* That the parties shall be given notice, either during the hearing or by reference in the administrative law judge's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary;

(12) Prepare, serve, and submit his initial decision pursuant to § 246.14.

(13) Take any other action necessary and not prohibited by this section or the Act.

§ 246.11 Appearance of the respondent and the agency representative.

The respondent and the agency representative shall have the right to appear at such hearing in person, by counsel, or by other representative, to examine and cross-examine witnesses to the extent required for a full and true disclosure of the facts, to conduct oral argument at the close of testimony and to introduce into the record relevant documentary or other evidence, except that the participation of either party shall be limited to the extent prescribed by the administrative law judge.

§ 246.12 Evidence.

All evidence which is relevant, material, reliable, and probative, and not unduly repetitious or cumulative, shall be admissible in the hearing.

§ 246.13 Filing of briefs.

The respondent and the agency representative may submit a brief to the administrative law judge. The original and one copy of such brief shall be filed within 7 days after the close of the hearing, except that the administrative law judge may, for good cause, grant an extension of such time for filing.

§ 246.14 Decisions.

(a) After the close of the hearing and the receipt of briefs, if any, the administrative law judge shall expeditiously prepare an initial decision. The initial decision shall contain findings of fact, conclusions, and the reasons or basis therefor, upon the material issues presented, and shall specifically find whether the respondent committed the violations alleged and, if so, the amount of the civil penalty to be assessed.

(b) The administrative law judge shall cause his initial decision to be served on the respondent and the agency representative within 20 days after the close of the hearing or the receipt of all briefs, whichever is later, and shall forthwith transfer the record in the case to the Secretary through the Director.

(c) Within 10 days of receipt of the initial decision of the administrative law judge, either the respondent or the agency representative may file with the Secretary by serving the Director, an appeal of the initial decision. If no appeal is received within such period, the initial decision shall become the final administrative decision of the Secretary. If an appeal is received within such period, the Secretary shall render a final decision after considering the record and the appeal. Notice of an appeal by either party shall be promptly given in writing to the other party and notice of the Secretary's final decision upon appeal shall be promptly given in writing to both parties.

§ 246.15 Remission, mitigation, or compromise.

For good cause shown, the Secretary may at any time remit, mitigate, or compromise the assessment of a civil penalty made under the provisions of these regulations.

§ 246.16 Payment of penalty.

The respondent shall have 30 days from receipt of the final assessment decision within which to pay the penalty assessed. Upon a failure to pay the penalty, the Secretary may request the Attorney General to institute a civil action in the appropriate United States District Court to collect the penalty.

§ 246.17 Disposition of seized wildlife, products, property, or items.

(a) Upon the completion of proceeding involving a civil penalty, the Director may proceed in any court of competent jurisdiction against any wildlife, product, property, or item seized as a result of its use or possession in connection with a violation of the Act to have such wildlife, product, property, or item forfeited to the Director.

(b) Any wildlife, product, property, or item forfeited to the Director may be disposed of in such manner as he deems appropriate.

(c) The Director shall return any wildlife, product, property or item seized or the monetary amount if a bond was posted to the owner or consignee if he does not begin an action to have such wildlife, product, property, or item in a court of competent jurisdiction within 30 days following the disposition of the civil penalty pursuant to § 246.7 or § 246.14, whichever is applicable.

SUBCHAPTER F—AID TO FISHERIES

PART 250—FISHERIES LOAN FUND PROCEDURES

Subpart A—Introduction

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Subpart D—Default and Remedies

250.16 Default.
250.17 Remedies after default.

AUTHORITY: 70 Stat. 1121, as amended; 16 U.S.C. 742c, as amended, and Reorganization Plan No. 4 of 1970.

SOURCE: 46 FR 67, Jan. 2, 1981, unless otherwise noted.

Subpart A—Introduction

§ 250.1 Purpose.

These regulations implement the provisions of section 4 of the Fish and Wildlife Act of 1956, as amended. Section 4 creates a fisheries loan fund to be used as a revolving fund to make loans for financing or refinancing the cost of purchasing, constructing, equipping, maintaining, repairing, or operating new or used commercial fishing vessels or gear. The broad objective of the fund is to provide reasonable financial assistance not otherwise available to commercial fishermen to enable them to maintain, operate, or upgrade commercial fishing vessels and gear.

§ 250.2 Definitions.

For the purposes of this part, the following terms shall be construed, respectively, to mean and to include:

(a) Secretary. The Secretary of Commerce or his authorized representative.

(b) Act. The Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742(c)).

(c) Person. Individual, association, partnership or corporation, any one or all as the context requires.

(d) State. Any State, the territories and possessions of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

(e) Citizen of the United States.

(1) Any person who is a United States citizen by law, birth, or naturalization; (2) any State, any agency of a State, or a group of States; (3) any partnership or association organized under the laws of any State whose members are United States citizens; or (4) any corporation organized under the laws of any State which has as its president or other chief executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth, or naturalization, and which has at least seventy-five percent (75%) of the interest in the corporation owned by citizens of the United States. Seventy-five percent (75%) of the interest in the corporation shall not be deemed to be owned by citizens of the United States if:

(i) The title of seventy-five percent (75%) of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States;

(ii) Seventy-five percent (75%) of the voting power in such corporation is not vested in citizens of the United States;

(iii) Through any contract or understanding it is so arranged that more than twenty-five percent (25%) of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or

(iv) By any other means whatsoever, control of any interest in the corporation in excess of twenty-five percent (25%) is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

(f) National of the United States. (1) Any person who is a United States national by law or birth; (2) any partnership or association organized under the laws of any State or American Samoa whose members are United States nationals or any corporation organized under the laws of any State or American Samoa:

(i) which has as its president or other chief executive officer and as its chairman of the board of directors a person who is a United States citizen or national, (ii) in which no more of its directors than a minority of the number necessary to constitute a quorum are non-nationals and non-citizens, and (iii) in which at least seventy-five percent (75%) of the interest therein is owned by nationals of the United States, citizens of the United States, or both. Seventy-five percent (75%) of the interest in a corporation shall not be deemed to be owned by nationals of the United States, citizens of the United States, or both, (A) if the title to seventy-five percent (75%) of its stock is not vested in such nationals or citizens free from any trust or fiduciary obligation in favor of any person not a national or citizen of the United States; or (B) if seventy-five percent (75%) of the voting power in such corporation is not vested in nationals of the United States, citizens of the United States, or both; or (C) if through any contract or understanding it is so arranged that more than twenty-five percent (25%) of the voting power may be exercised, directly or indirectly, on behalf of any person who is not a national or citizen of the United States; or (iv) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a national or citizen of the United States.

(g) Commercial fishing vessel. Any vessel, boat, ship, or other craft which is (1) documented under the laws of the United States or, if under five net tons, registered under the laws of any State, and (2) used for, equipped to be used for, or of a type which is normally used for commercial purposes for the catching, taking, or harvesting of fish or the aiding or assisting at sea of any activity related to the catching, taking, or harvesting of fish, including, but not limited to, preparation, supply, storage, refrigeration, transportation or processing.

(h) Fishing gear. Any equipment used by a commercial fishing vessel, whether or not such equipment is attached to the vessel.

(i) Fund. The Fisheries Loan Fund established under 16 U.S.C. 742(c), as amended.

(j) Obligation. Any note, bond, debenture, or other evidence of indebtedness.

(k) Obligor. Any owner or operator of a commercial fishing vessel who is primarily liable for payment of principal of or interest on any obligation.

(l) Fishery. A segment of the commercial fishing industry engaged in the catching of a single species or a group of species of fish or shellfish. Any species other than those comprising the fishery must be caught incidentally while fishing for and using gear designed for the capture of the species comprising the fishery.

§ 250.3 Loan authorizations and priority.

(a) Loans may be made from the Fund for financing or refinancing the cost of purchasing, constructing, equipping, maintaining, repairing, or operating new or used commercial fishing vessels or gear, except as limited by paragraph (b)(3) of this section, including, but not limited to loans to assist obligors to make installment payments on existing mortgages or obligations incurred in connection with the above purposes.

(b) The fund shall not be used to make loans for—

(1) Any phase of a shore operation;

(2) Refinancing (i) existing loans that are not secured by a commercial fishing vessel or gear, or (ii) debts which are not maritime liens within the meaning of subsection P of the Ship Mortgage Act of 1920, as amended (46 U.S.C. 971);

(3) The purchase or construction of a new or used commercial fishing vessel which will not replace an existing commercial fishing vessel, except in those instances where the Secretary first determines that the applicant's contemplated operation of such vessel in a fishery will not cause economic hardship or injury to the efficient vessel operators already operating in that fishery. In making such determination, the Secretary shall take into consideration the condition of the fishery, the efficiency of the commercial fishing vessels and gear being operated in that fishery compared with that of the proposed commercial fishing vessel, the prospects of the market for the species comprising the fishery, and the degree and duration of any anticipated economic hardship;

(4) Repair or purchase of commercial fishing vessels or gear where such vessels or gear are not offered as collateral for the loan by the applicant; or

(5) Financing a new business venture in which the controlling interest is owned by a person or persons who are not currently engaged in commercial fishing.

(c) *Priority.* A priority shall be granted to assist obligors to avoid default on obligations that were issued for the construction, reconstruction, reconditioning or purchase of fishing vessels and that were guaranteed by the United States under the Fishing Vessel Obligation Guarantee Program authorized by Title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271-1280, the "FVOG Program"). Due to the limited amount of fund lending capital, no loan applications shall presently be accepted from applicants whose vessel financing was not guaranteed by the United States under the FVOG Program.

Subpart B—Application

§ 250.4 Eligibility.

A loan applicant shall be eligible under this program if such applicant is a citizen or national of the United States (as defined in § 250.2 (e) or (f)) and:

(a) Resides in or conducts business in any state;

(b) Owns, operates, or will own a commercial fishing vessel or gear used, or to be used, directly in the conduct of commercial fishing operations;

(c) In the case of a fishery marketing cooperative, is engaged in marketing all catches of fish or shellfish by its members pursuant to contractual or other enforceable arrangements which empower the cooperative to exercise full control over the conditions of sale of all such catches and disburse the proceeds from all such sales; and

(d) Can demonstrate to the satisfaction of the Secretary that he has substantial experience and proven ability in the management and financing of fishing operations, the resources and other qualifications necessary for the operation and maintenance of a new or used commercial fishing vessel or gear in the intended fishery of operation, and that the loan is likely to result in the continued viability of the commercial fishing operation.

§ 250.5 Financial requirements.

To qualify for a loan, the applicant must submit at the time of application, and as subsequently required by the Secretary, financial information satisfactory to the Secretary that:

(a) The security or collateral for a loan is adequate to provide reasonable assurance of repayment. The security or collateral must be of such sufficiency, considering the integrity and ability of the applicant, and the applicant's past and prospective earnings, that repayment of the loan will be reasonably assured;

(b) The financial assistance applied for is not otherwise available at reasonable rates which permit continued operation. The financial assistance applied for shall be deemed to be otherwise available at reasonable rates which permit continued operation unless an applicant can show:

(1) Proof of refusal of the desired credit from the applicant's bank. Such proof of refusal must contain the date, amount, and term requested; and, if the loan applied for is in excess of the legal lending limit of the applicant's bank or in excess of the amount that such bank normally lends to any one borrower, then proof of refusal must

be obtained from a correspondent bank or other lending institution which has the lending capacity to cover the loan applied for; and

(2) That credit is otherwise unavailable on reasonable terms from sources other than such banks, as from (i) the disposal at a fair price of assets not required by the applicant in the conduct of his business or not reasonably necessary to its potential growth; or (ii) use of personal credit and/or resources of the owner, partners, management, affiliates or principal stockholders of the applicant; or (iii) from other known sources of credit.

Bank refusals to advance credit will not be considered the full test of unavailability of credit where there is knowledge or reason to believe that credit is otherwise available on reasonable terms from sources other than such banks. *Provided that,* in the case of an application by an obligor whose obligation is guaranteed under the FVOG Program, proof of the refusal of the obligor's bank to extend further credit on behalf of the obligor may constitute proof that the credit applied for is not otherwise available on reasonable terms;

(c) In making the aforementioned determinations, and any others associated with economic or financial considerations, the Secretary may consider, among other factors, current economic conditions within a fishery.

§ 250.6 Application processing and procedures.

(a) *Forms.* Applicants shall file an application furnished by the National Marine Fisheries Service with the Regional Branch of the National Marine Fisheries Service's Financial Service's Division in the region in which the applicant conducts his business. The respective Regional office addresses follow:

Northeast Region

(Maine, Massachusetts, Rhode Island, Connecticut, New Hampshire, New York, New Jersey, Delaware, Maryland, Virginia)

Financial Services Branch, National Marine Fisheries Service, Post Office Building, Box 1109, Gloucester, Massachusetts 01930 (617) 281-3600

Southeast Region

(North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Puerto Rico, Virgin Islands)

Financial Services Branch, National Marine Fisheries Service, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702 (813) 893-3271

Southwest Region

(California, Hawaii, American Samoa, Guam, Trust Territory of Pacific Islands)

Chief, Fisheries Development Division, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 (213) 548-2575

Northwest Region

(Washington, Oregon, Alaska)

Financial Services Branch, National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Washington 98109 (206) 442-5532

(b) *Processing of Applications.* If the application is complete and in conformity with the Act and this Part 250, the Regional Financial Services office will then conduct an investigation of the applicant. Upon completion of the investigation, a decision will be made and the Regional Financial Services office will inform the applicant.

(c) *Purchase or construction loans.* When the Secretary determines that an application is eligible on its face for the purchase or construction of a new or used commercial fishing vessel that will not replace an existing commercial fishing vessel, a notice shall be published in the FEDERAL REGISTER that such application is being considered and all interested parties will be given a period of 30 days to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operations already in that fishery. If such evidence is received, the Secretary shall evaluate it along with such other evidence as may be available to him before making a determination that the contemplated operation of the vessel will or will not cause such economic injury or hardship. The foregoing procedure will not apply in cases where the applicant seeks to replace a commercial fishing vessel lost or destroyed within 2 years of the date of the application.

Subpart C—Loans

§ 250.7 Approval of loan.

The Secretary will evidence his approval of the loan by issuing a loan authorization covering the terms and conditions relating to the loan. Documents executed in connection with a loan shall be in a form and substance approved by the Secretary. Applicants whose applications are not approved will be so notified by a letter sent from the appropriate Financial Services office.

§ 250.8 Amount of loan.

The amount of loan requested in an application may be limited from time to time in order to prevent the exhaustion of funds available for loans and to assure that fund monies will be used as effectively as possible. Loan amount limitations (and other requirements) will be effected by instructions from the Chief, Financial Services Division, National Marine Fisheries Service, Washington, D.C.

§ 250.9 Interest.

The rate of interest on all loans made under these regulations shall be fixed at a rate not more than the rate determined by the Secretary to be sufficient to cover the costs of processing and servicing the loans. The rate of interest shall be determined and reviewed periodically by the Chief. Financial Services Division, National Marine Fisheries Service, Washington, D.C.

§ 250.10 Maturity.

The maturity of any loan shall be determined by the Secretary and fixed according to the circumstances, but the date of maturity so fixed shall not exceed 10 years, except in the case where a loan is for all or part of the costs of constructing a new commercial fishing vessel, in which case the maturity may be up to 14 years.

§ 250.11 Security.

Loans shall be approved only upon the furnishing of such security or other reasonable assurance of repayment as the Secretary may require. The proposed collateral for a loan must be of such a nature that, when considered with the integrity and ability of the management, and the applicant's past and prospective earnings, repayment of the loan will be reasonably assured. In making the aforementioned determinations, the Secretary may consider, among other factors, current economic conditions within a fishery.

§ 250.12 Insurance.

(a) If insurance of any type is required on property under the terms of a loan authorization or mortgage it must be in a form approved by the Secretary and obtained from an underwriter, satisfactory to the Secretary, which meets at least one of the following requirements:

(1) An underwriter licensed by an insurance regulatory agency of a State to write the required form of insurance.

(2) A foreign insurance company or club operating in the United States that has deposited funds in an amount and manner satisfactory to the Secretary in a bank chartered under the laws of a State or the United States of America, or in a trust fund satisfactory to the Secretary, which funds are solely for the payment of insurance claims on United States vessels or other insured assets.

(3) A reciprocal or interinsurance exchange licensed by an insurance regulatory agency of a State to write the required form of insurance.

(4) An insurance pool composed entirely of owners and operators of commercial fishing vessels.

(b) Any underwriter (including a company, club, or pool) writing insurance shall furnish such reasonable financial or operating data as the Secretary may require to determine the standing and responsibility of said underwriter.

§ 250.13 Inspection of property.

The Secretary or any duly authorized agent of the Secretary shall have access at all reasonable times to all vessels or other security with respect to which a loan has been granted or for which an application for loan has been filed.

§ 250.14 Books, records and reports.

The Secretary shall have the right to inspect such books and records, including tax returns, of the applicant as the Secretary in his discretion may deem necessary. The Secretary may also require periodic reports to be submitted by a loan recipient.

§ 250.15 Modification.

Subject to the specific limitations of the Act, the Secretary may consent to the modification of any loan contract to which he is a party, with respect to any terms or conditions of such contract, including the rate of interest, the time of payment of any installment of principal, or the security for the loan. Any modification of the terms or conditions of a loan following its execution must be agreed to in writing by the borrower and the Secretary.

Subpart D—Default and Remedies

§ 250.16 Default.

Unless otherwise provided in the loan documents, failure on the part of the borrower to conform to any of the terms or conditions of the Act, these regulations, or the loan documents will be deemed to constitute a default.

(a) *Payment default.* In the case of any default in the payment of principal or interest on the loan, the Secretary may, if the default shall have continued for 30 days, demand payment and declare the entire amount of the loan immediately due and payable.

(b) *Security default.* If a default occurs under the terms of the Act, these regulations, or any contract which is other than a payment default, the Secretary shall have the discretion to declare such default a security default, and may notify the borrower of such security and set an appropriate time within which the borrower shall cure such default. If such security default is not cured within the time allowed, the Secretary may demand payment and declare the entire amount of the loan immediately due and payable.

(c) In the case of either a payment default or a security default, the Secretary may immediately, upon notification of such default, discontinue any further disbursement of loan funds to the borrower.

§ 250.17 Remedies after default.

Provisions governing remedies after default shall be included in the loan documents. Upon default, the Secretary may cause any one or all of the following steps to be taken:

(a) Take possession of any or all collateral given as security for the loan including the commercial fishing vessel or gear for which the funds were borrowed.

(b) Initiate or participate in legal proceeding of any type against the borrower or the security, including foreclosure.

(c) Pursue any or all remedies provided by law in equity or as provided for in any Preferred Ship Mortgage or other loan agreement entered into between the Secretary and the applicant.

PART 251—FINANCIAL AID PROGRAM PROCEDURES

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251.22 Fishery for American lobster (Homarus Americanus) in the Gulf of Maine.
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251.26 Fishery for Atlantic Groundfish (cod, haddock, and yellowtail flounder).

AUTHORITY: Sec. 4 of the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742) Title XI, Merchant Marine Act, 1936, as amended (46 U.S.C. 1271-1279) sec. 607, Merchant Marine Act, 1936, as amended (46 U.S.C. 1177) National Environmental Policy Act, 42 U.S.C. 4321-4347; and Reorganization Plan No. 4 of 1970, 86 Stat. 909.

SOURCE: 38 FR 29328, Oct. 24, 1973, unless otherwise noted.

Subpart A—General Policy

§ 251.1 Definitions.

For the purposes of this part, the following terms shall be construed as follows:

(a) *Secretary.* This term means the Secretary of Commerce or his delegate.

(b) *Director.* This term means the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration or his delegate.

(c) *State.* This term means the several States of the United States, including the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

(d) *Agency.* This term means any Federal, State, or local Government, or International Organization to which the United States is a party, or any combination thereof, duly authorized to carry out functions related to the Fisheries Resources or the Fishing Industry.

(e) *Fisheries resources.* This term means any form, or forms, of animal or plant life found in the aquatic environment.

(f) *Fishing industry.* This term means a part, or parts, of the economic systems of labor and capital, directly or indirectly, deriving revenue from activities related to the Fisheries Resources.

(g) *Fishery.* This term means a part of the Fishing Industry engaged in harvesting a specific part, or parts, of the Fisheries Resources for commercial purposes.

(h) *Management.* This term means Agency activities related to assisting the Fishing Industry or protecting the Fisheries Resources.

(i) *Conditional fishery.* This term means a Fishery in which National Marine Fisheries Service financial assistance for fishing vessels will be approved only under provisional terms consistent with needs and objectives of Management, as determined by the Director. The terms under which financial assistance related to a Conditional Fishery may be approved will be set forth in the regulations for each program. (See § 251.2(c).)

§ 251.2 Scope and purpose.

(a) This part will provide for the central filing of (1) the Administrator's policy related to restricting the use of financial assistance programs in certain fisheries, (2) notices of proposed rule making, (3) locations of principal offices where the public may obtain information related to the functions cited in paragraph (b) of this section and the regulations cited in paragraph (c) of this section.

(b) This part sets forth policy and procedures under which the Director will perform his general responsibilities related to the following:

(1) The functions in section 4 of the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742c), which relate to the "Fisheries Loan Fund" for the purpose of providing financial assistance to commercial fisheries.

(2) The functions in section 607 of the Merchant Marine Act, 1936, as amended by the Merchant Marine Act of 1970 (46 U.S.C. 1177), which relate to the creation of "Capital Construction Funds" including tax deferrals, under certain conditions, to those owning or leasing vessels which are operated in the fisheries of the United States.

(3) The functions in Title XI of the Merchant Marine Act, 1936, as amended, and as amended by the Federal Ship Financing Act of 1972 (46 U.S.C. 1271-1279) which relate to the guarantee of certain obligations for, among other things, the construction, recon-

struction or reconditioning of fishing vessels.

(4) The functions in section 4331 of the National Environmental Policy Act (42 U.S.C. 4331), which relate to the responsibility of the Federal Government to improve and coordinate Federal programs, including financial assistance, that impact on the natural environment.

(c) *Cross references.* (1) For regulations relating to the functions quoted in paragraph (b)(1) of this section see Part 250 of this chapter governing Fisheries Loan Fund Procedures.

(2) For regulations relating to the functions quoted in paragraph (b)(2) of this section see Part 259 of this chapter governing Capital Construction Funds.

(3) For regulations relating to the functions quoted in paragraph (b)(3) of this section see Part 255 of this chapter governing Fishing Vessel Obligation Guarantee Procedures.

§ 251.3 Policy.

(a) Section 742(f) of the Fish and Wildlife Act of 1956, as amended, provides, in part, that the Secretary shall (1) consider and determine the policies and procedures that are necessary and desirable in carrying out efficiently and in the public interest the laws relating to fish; (2) develop and recommend measures which are appropriate to assure the maximum sustainable production of fish and fishery products and to prevent unnecessary and excessive fluctuations in such production; and (3) take such steps as may be required for the development, advancement, management, conservation, and protection of the fisheries resources.

(b) Under Title XI of the Merchant Marine Act, 1936, as amended, no commitment to guarantee an obligation shall be made by the Secretary unless he finds that the purpose of the financing or refinancing is consistent with the wise use of the fisheries resources and with the development, advancement, management, conservation, and protection of the fisheries resources.

(c) Section 607(a) of the Merchant Marine Act, 1936, as amended, provides, in part, that the deposits in a Capital Construction Fund, and all withdrawals from the Fund, whether qualified or nonqualified, shall be subject to such conditions and requirements as the Secretary of Commerce may by regulation prescribe or as are set forth in such agreement. Regulations under Part 259 of this chapter related to "Capital Construction Funds" and qualified withdrawals from an Interim Fund established for fishing vessels under the Merchant Marine Act, 1936, as amended. Under existing Interim Agreements, the Secretary may determine that withdrawals which would add fishing vessels to an existing fleet in a fishery will be inconsistent with the wise use of the fishery resource involved, and inconsistent with the development, advancement, management, conservation, or protection of that resource, and therefore may from time to time withhold his consent to the qualification of such withdrawals. The form of existing Interim Agreement appears in 36 FR 19699, October 9, 1971.

(d) Section 4331 of the National Environmental Policy Act, provides, in part, that the Federal Government use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal programs to the benefit of the Nation.

§ 251.4 Policy interpretations and determinations.

(a) The Director will interpret and apply, to the extent practicable, the language quoted in paragraphs (a), (b), (c), and (d) of § 251.3, to administer financial assistance programs in a manner which, on balance, will be consistent with the needs and objectives of Management related to each Fishery.

(b) It is recognized that (1) the Fisheries Resources, upon which the Fishing Industry depends, are renewable but limited with respect to yield; (2) the Fisheries Resources are subject to increasing fishing pressures and uncertainties; (3) management must be strengthened to produce desired benefits from the Fisheries Resources; and (4) it would not be a wise and efficient use of financial assistance programs to encourage the introduction of vessels into a Fishery classified as a Conditional Fishery in this part.

(c) The National Marine Fisheries Service shall, under procedures established, or to be established, by the Director, maintain a continuing review of all Fisheries Resources for the purpose of determining a Fishery which may be in need of regulation as a Conditional Fishery to carry out the policy, intent, and purposes of this part.

(d) The Director shall take actions to publish notices of proposed rulemaking related to a Fishery being considered for regulation as a Conditional Fishery under this part. The public and Agency officials shall be given 90 days to comment on such notices of proposed rulemaking.

(e) In any case when it is determined that a Fishery is to be regulated as a Conditional Fishery under this part and a regulation related to that Conditional Fishery is to be adopted, such regulation, to be incorporated in Subpart B of this part, shall be published in the FEDERAL REGISTER, after 90 but within 180 days of the date the notice of proposed rulemaking with respect to such Fishery was published as set forth in paragraph (d) of this section.

(f) Findings and determinations made by the Director in accordance with this part will be based on source materials related to Management and the Fishery under consideration and made available through procedures as set forth in this part.

(g) Findings and determinations for financial assistance applications related to fishing vessels operating in a Fishery not yet regulated as a Conditional Fishery in this part may be made under existing delegations of authority. Such findings and determinations shall be (1) based on an evaluation of available information related to Management and the particular Fishery under consideration, (2) made using the guidelines and criteria as set forth in §§ 251.8 and 251.9 of this part, and (3) consistent with the policy, intent and purposes of this part.

(h) Amendments to, or revisions of, this part may be made when new information becomes available, or at any time, to add or to delete a Conditional Fishery from this part.

§ 251.5 Organization.

(a) The National Oceanic and Atmospheric Administration (NOAA) is a component of the Department of Commerce.

(b) The National Marine Fisheries Service (NMFS), a component of NOAA, has responsibility to carry out generally the functions quoted in this part.

§ 251.6 Principal offices of the National Marine Fisheries Service.

(a) The mailing address of the Office of the Director, NMFS, is:

Director
National Marine Fisheries Service
3300 Whitehaven Street NW.
Washington, D.C. 20235

(b) Mailing addresses of the Offices of the Regional Directors, NMFS, are:

Director, Northwest Region
National Marine Fisheries Service
1700 Westlake Avenue North
Seattle, Washington 98109

Director, Southeast Region
National Marine Fisheries Service
Duval Bldg.
9450 Gandy Blvd.
St. Petersburg, Florida 33702

Director, Northeast Region
National Marine Fisheries Service
Federal Building
14 Elm Street
Gloucester, Massachusetts 01930

Director, Southwest Region
National Marine Fisheries Service
300 South Ferry Street
Terminal Island, California 90731

Director, Alaska Region
National Marine Fisheries Service
P.O. Box 1668
Juneau, Alaska 99801

§ 251.7 Information sources and needs.

(a) Information for consideration under this part should relate to the Fisheries Resources, the Fishing Industry, and Management relative to the Fishery under consideration for regulation as a Conditional Fishery.

(b) All sources that may be anticipated to provide fair and reasonable information should be explored.

(c) Information should include, but not be limited to, material in the following general classifications: (1) Environmental, (2) biological, (3) economic, (4) social, (5) legal, (6) international, and (7) national interests.

§ 251.8 Evaluation guidelines.

(a) For each Fishery under consideration for regulation as a Conditional fishery general guidelines for evaluation will be conditions that exist relating to each Fishery and (1) international fishery agreements or conventions, to which the United States is a party, dealing with fishery conservation or management, (2) Agency regulations dealing with fishery conservation or management, (3) the available data base, (4) proposed designated areas or zones, (5) the current and projected status of the existing fishing fleet, (6) the harvesting activities of fishing vessels engaged in that Fishery, (7) foreign competition, (8) Management, and (9) other relevant factors.

§ 251.9 Evaluation criteria.

(a) For each Fishery under consideration to be regulated as a Conditional fishery the Director will evaluate (1) related information received from interested parties, (2) related environmental factors, (3) the history, present status, and prospective developments related to the Fishery, (4) conditions that may be necessary for reasonable improvement of a depressed Fishery, (5) conditions that may be necessary for reasonable stability of an economically and environmentally sound Fishery, (6) conditions that could contribute to adverse fluctuations or declines in yield, (7) the need to improve the economic efficiency of the fishing fleet, (8) the need to assure for fishermen safe and healthful fishing vessels, (9) the need to improve the engineering efficiency of the fishing vessels operating in the Fishery, (10) social needs, and (11) information and data on hand related to that Fishery.

Subpart B—Conditional Fisheries

§ 251.20 Fishery for yellowfin tuna in the area regulated by the Inter-American Tropical Tuna Commission.

[39 FR 25325, July 10, 1974]

§ 251.21 Fishery for salmon in Alaska.

[39 FR 34053, Sept. 23, 1974]

§ 251.22 Fishery for American lobster (Homarus Americanus) in the Gulf of Maine.

[40 FR 43734, Sept. 23, 1975]

§ 251.23 Fishery for salmon in Washington, Oregon, and California.

[40 FR 43734, Sept. 23, 1975]

§ 251.24 Fishery for king crab in Alaska.

[40 FR 43508, Sept. 22, 1975]

§ 251.25 Fishery for surf clams.

[42 FR 35854, July 12, 1977]

§ 251.26 Fishery for Atlantic Groundfish (cod, haddock, and yellowtail flounder).

[44 FR 4495, Jan. 22, 1979]

PART 253—COMMERCIAL FISHERIES RESEARCH AND DEVELOPMENT

Sec.
253.1 Definitions.
253.2 Interpretation of the authorization.
253.3 General provisions.
253.4 Use of funds.
253.5 Environment.
253.6 Assurances.

AUTHORITY: Sec. 8, Commercial Fisheries Research and Development Act of 1964, 78 Stat. (16 U.S.C. 779a-779f), as modified by Reorganization Plan No. 4 of 1970, effective October 3, 1970 (35 FR 15627).

SOURCE: 41 FR 55534, Dec. 21, 1976, unless otherwise noted.

§ 253.1 Definitions.

As used in this part, terms shall have the meaning ascribed in this section.

(a) *Secretary.* The Secretary of Commerce or his authorized representatives.

(b) *Act.* The Commercial Fisheries Research and Development Act of

1964, Pub. L. 88-309, 78 Stat. 197, as amended by Pub. L. 90-551, 87 Stat. 957, Pub. L. 92-590, 86 Stat. 1303, and Pub. L. 94-485, 90 Stat. 2326 (16 U.S.C. 779 et seq.).

(c) *Grantee.* A State agency participating in a grant-in-aid award with the Secretary.

(d) *Application SF-424.* A description of the work to be accomplished, including plans, specification, and estimates, and such other information as may be required by the Secretary.

(e) *Grant-in-aid award.* A written agreement for research and development activities to be carried on as provided by the Act and these regulations. Such award shall set forth the terms and conditions binding upon the grantee and the Secretary, including the objectives, procedures, costs, the award period, and such other provisions as may be appropriate.

(f) *Aquatic plants and animals.* All animals and plants growing or living in or upon water, including finfish, shellfish, and other marine invertebrates, fur seals, whales and other marine mammals, frogs, turtles, and algae.

(g) *Commercial fisheries resources.* Any aquatic plant or animal available or potentially available for harvesting with the primary intent of commercial use as either raw or manufactured products

§ 253.2 Interpretation of the authorization.

The terms used in the Act to describe the authorization to the Secretary for program and apportionment purposes are construed to be limited to the meanings ascribed in this section.

(a) *Research and development.* Thewords "research and development" mean program of work, including construction and acquisition, designed to acquire knowledge of commercial fisheries resources and their environment, and to develop and apply methods and techniques to enhance such commercial fisheries resources including their harvest, conservation and utilization.

(b) *Raw fish harvested by domestic commercial fishermen and received within a State.* The words "raw fish harvested by domestic commercial fishermen and received within a State" mean living aquatic plants and animals harvested by individuals, associations, partnerships or corporations resident in and authorized to do business in any State and engaged in harvesting of commercial fisheries resources or the processing and manufacturing of products therefrom. Aquatic plants and animals are received within a State when transferred from a catcher vessel within the jurisdiction of a State or permanently removed from a fish production facility.

(c) *Manufactured and processed fishery merchandise.* The words "manufactured and processed fishery merchandise" means commercial fisheries resources or parts thereof after undergoing a change(s) contributing to or achieving a condition of readiness for sale.

(d) *Developing a new commercial fishery.* The words "developing a new commercial fishery" mean activities designed to assist the commercial fishing industry by developing and evaluating methods for the harvest, utilization, and conservation of commercial fisheries resources not commonly utilized.

(e) *Commercial fishery failure due to a resource disaster arising from natural or undetermined causes.* The words "commercial fishery failure to a resource disaster arising from natural or undetermined causes" mean a serious disruption of a commercial fisheries resource affecting present or future productivity. It does not include inability to sell raw fish or manufactured and processed fishery merchandise or compensation for economic loss suffered by any segment of the fishing industry as the result of a resource disaster.

(f) *State.* The word "State" means the several States of the United States, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

§ 253.3 General provisions.

(a) *Designation of State agency.* The Governor of each State shall notify the Secretary which agency of the State government is authorized under its laws to regulate commercial fisheries and is designated to submit applications and to enter into grant-in-aid awards. An official of such agency shall certify as to the official(s) authorized in accordance with State law to commit the State to participation under the Act, to sign project documents, and to receive payments. The Secretary shall be advised promptly of any changes made in such authorizations.

(b) *Application.* (1) An application (SF-424) for Federal assistance may be submitted for a State's overall program or for each proposed project for approval by the Secretary. An approved application is the obligating document for Federal funds.

(2) Applications utilizing an allocation of State funds additional to amounts previously allocated by the State for commercial fishery research and development activities shall be preferred over applications utilizing an allocation of State funds which does not involve an increase of State funds dedicated to commercial fishery research and development programs. No application which involves a reduction of State funds previously dedicated to commercial fishery research development will be approved.

(c) *Grant-in-aid award.* (1) After the Secretary has approved an application, activities to be undertaken by the grantee shall be evidenced by a grant-in-aid award (NOAA Form 36-16) executed by the grantee and the Secretary. Such awards may be amended by mutual consent of the parties.

(2) The grant-in-aid award shall contain applicable provisions as required by Federal law and regulations. These provisions are identified in the Grant-in-Aid Handbook. NOAA Handbook No. 22, the most recent version of which may be obtained from the Director, National Marine Fisheries Service.

(d) *Prosecution of work.* (1) The prosecution of work by the grantee shall be performed in a manner acceptable to the Secretary. Unsatisfactory performance shall be cause for the Secretary to withhold payments. Grant-in-aid awards may be terminated or suspended upon determination by the Secretary that satisfactory progress has not been maintained.

(2) All work shall be performed in accordance with applicable State laws except when such laws are in conflict with Federal laws or regulations in which case such Federal law or regulations shall prevail.

(e) *Economy and efficiency of operation.* No grant-in-aid award shall be executed until the grantee has shown to the satisfaction of the Secretary that appropriate and adequate means shall be employed to achieve economy and efficiency, including the avoidance of undesirable duplication, in the completion of a project.

§ 253.4 Use of funds.

(a) *Apportionment of subsection 4(a) funds.* (1) On October 1 of each year, or as soon thereafter as practicable, the Secretary shall notify the respective States of the amount of funds authorized under subsection 4(a) of the Act and apportioned to each State under subsection 5(a) of the Act. Funds appropriated under the Act shall remain available until expended to carry out the purposes of this authorization as determined by the Secretary.

(2) Any State which is unable to use any or all of the funds apportioned to it may voluntarily release all or any part of such apportioned funds. Such release must be in writing and signed by the State official in charge of the agency designated under § 253.3(a) of these regulations or some other appropriate State official. Any apportioned funds released by a State may be made available by the Secretary to any other State, to supplement the funds apportioned to such other State in the fiscal year in which the released funds were apportioned, when the Secretary determines that such State is able to make prompt and effective use of such funds to carry out the purpose of the Act.

(b) *Use of authorized funds for commercial fisheries resource disaster.* (1) The Secretary shall cause to be published in the FEDERAL REGISTER a notice that a commercial fisheries resource disaster exists at the time such a finding is made.

(2) After such publication, Federal funds may be used for 100 percent of

the cost of restoration of commercial fisheries resources if all the funds are obtained from appropriations authorized under subsection 4(b) of the Act.

(c) *Use of funds for developing a new commercial fishery.* (1) Applications related to the development of a new commercial fishery may be approved only after the Secretary determines that such applications will reasonably accomplish the purpose of developing a new commercial fishery.

(2) The Secretary may finance up to 100 percent of the cost of developing a new commercial fishery.

§ 253.5 Environment.

Projects shall be performed in such manner as to be consistent with the policies set forth in the National Environmental Policy Act of 1969, as amended by Pub. L. 94-83 (89 Stat. 424).

§ 253.6 Assurances.

The State must assure and certify that it will comply with all applicable Federal laws, regulations, and requirements as they relate to the application, acceptance, and use of Federal funds for projects under the Act in accordance with Federal Management Circular 74-7.

PART 254—CONTROL OR ELIMINATION OF JELLYFISH

Sec.
254.1 Definitions.
254.2 Funding priorities.
254.3 General provisions.
254.4 Availability of funds.
254.5 Use of funds.
254.6 Environment.
254.7 Water pollution control.
254.8 New work requirement.

AUTHORITY: Secs. 1-5, 80 Stat. 1149; 16 U.S.C. 1201-1205, as modified by Reorg. Plan No. 4, of 1970.

SOURCE: 36 FR 10738, June 2, 1971, unless otherwise noted.

§ 254.1 Definitions.

As used in this part, terms shall have the meaning ascribed in this section.

(a) *Secretary.* The Secretary of Commerce or his authorized representatives.

(b) *Act.* Pub. L. 89-720, 80 Stat. 1149, as amended by Pub. L. 91-451, 84 Stat. 922 (16 U.S.C. 1201 et seq.).

(c) *State.* Any coastal State of the United States and the Commonwealth of Puerto Rico.

(d) *State agency.* The department(s), division(s), or commission(s) of a State empowered under its laws to manage or administer fish and shellfish resources or water-based recreation programs.

(e) *Cooperator.* A State agency participating in a cooperative agreement with the Secretary.

(f) *Coastal waters.* For the purpose of this Act, coastal waters include all or part of the mouth of a navigable or interstate stream or body of water, bays, sounds, lagoons, channels, estuaries, and other such waters.

(g) *Jellyfish.* Commonly known as "sea nettle," belonging to the phylum Coelenterata.

(h) *Other such pests.* All other species belonging to the phyla Coelenterata and Ctenophora which adversely affect fish, shellfish or water-based recreation.

(i) *Floating seaweed.* Marine plants including marine algae.

(j) *Project proposal.* A description of work to be accomplished, including objectives, procedures, cost, location, and time required for completion, and such other information as may be required by the Secretary.

(k) *Cooperative agreement.* The contract for research, control, or elimination of jellyfish and other such pests or the control of floating seaweed to be carried on as provided by the Act and these regulations. Such agreement shall set forth the terms and conditions binding upon the cooperator and the Secretary, including the objectives, procedures, costs, the term of the agreement, and such other provisions as may be appropriate.

§ 254.2 Funding priorities.

Funding priorities shall be given to those activities having the greatest potential for controlling or eliminating jellyfish and other such pests for the purposes of conserving and protecting the fish and shellfish resources in coastal waters.

§ 254.3 General provisions.

(a) *Designation of State agency.* A State agency authorized under its laws to manage or administer fish or shellfish resources or water-based recreational programs may submit project proposals and enter into cooperative agreements with the Secretary.

(b) *Project proposal.* (1) A project proposal shall be submitted for each proposed project for approval by the Secretary. An approved project proposal shall not be binding on the parties until incorporated in a cooperative agreement.

(2) Project proposals utilizing an allocation of State funds additional to amounts previously allocated by the State for the control or elimination of jellyfish and other such pests in coastal waters and for research on control of floating seaweed in such waters shall be preferred over project proposals utilizing an allocation of State funds which do not involve an increase of State funds dedicated to such programs. No project proposal which involves a reduction of State funds previously dedicated to such programs will be approved.

(c) *Cooperative agreement.* (1) After the Secretary has approved a project proposal, activities to be undertaken by the cooperator and the obligation of Federal funds shall be evidence by a cooperative agreement executed by the cooperator and the Secretary. Such agreement may be amended by mutual consent of the parties.

(2) The cooperative agreement shall contain applicable provisions as required by Federal law and regulations. These provisions are identified in the Federal Aid for Fisheries Handbook, the most recent version of which may be obtained from the Director, National Marine Fisheries Service.

(d) *Prosecution of work.* (1) The prosecution of work by the cooperator shall be performed in a manner acceptable to the Secretary. Unsatisfactory performance shall be cause for the Secretary to withhold payments. Cooperative agreements may be terminated or suspended upon determination by the Secretary that satisfactory progress has not been maintained.

(2) All work shall be performed in accordance with applicable State laws except when such laws are in conflict with Federal laws or regulations, in which case such Federal law or regulations shall prevail.

(e) *Economy and efficiency of operations.* No cooperative agreement shall be executed until the cooperator has shown to the satisfaction of the Secretary that appropriate and adequate means shall be employed to achieve economy and efficiency, including the avoidance of undesirable duplication, in the completion of a project.

(f) *Subcontracts.* In the performance of work under a cooperative agreement, subcontracts shall be solicited and awarded according to the laws and regulations of the State provided the Secretary is satisfied that adequate steps have been taken to insure economical and efficient services and impartial selection of subcontractors.

§ 254.4 Availability of funds.

Language appearing in Appropriation Acts providing funds for this program will govern the period during which the funds may be obligated.

§ 254.5 Use of funds.

(a) *Apportionment and obligation of Jellyfish funds.* On July 1 of each year, or as soon thereafter as practicable, the Secretary shall notify the States through publication in the FEDERAL REGISTER of the amount of funds authorized under the Act to carry out the purpose of the Act. Federal funds are tentatively made available for obligation for a specified period within the fiscal year in which appropriated. If the total or any portion thereof is unobligated at the end of this allocation period, such funds may be withdrawn and reallocated for obligation.

(b) *Administrative funds.* The National Marine Fisheries Service will finance its administrative cost from the appropriation made available by the Act. This administrative cost shall not exceed eight (8) percent of the appropriation.

(c) *Level of Federal funding.* Cost of activities under cooperative agreements shall be borne equally by the Federal Government and by the Cooperator. Eligible Cooperator matching funds are those available to the Cooperator agency from any non-Federal source.

§ 254.6 Environment.

Projects contracted for shall be performed in such a manner so as to be consistent with the policies set forth in the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321 et seq.).

§ 254.7 Water pollution control.

In the performance of work under a cooperative agreement the State shall take such action as is necessary to avoid pollution of water as a direct or indirect result of a contract activity. Water quality must be maintained at a level consistent with applicable water quality standards.

§ 254.8 New work requirement.

Project proposals shall set forth undertakings which constitute activities in addition to current programs. It is desirable that projects represent entirely new undertakings. However, expansion of existing programs for control or elimination of jellyfish and other such pests in coastal waters and research on control of floating seaweed in such waters is satisfactory provided such existing programs are not reduced insofar as the cooperator's financial participation is concerned.

PART 255—FISHING VESSEL OBLIGATION GUARANTEE PROGRAM PROCEDURES

Sec.

255.0 Reprint of Certain Provisions of Title XI of the Merchant Marine Act, 1936, as Amended through the Effective Date of the Federal Ship Financing Act of 1972.
255.1 Definitions.
255.2 Purpose and priority.
255.3 Eligibility requirements.
255.4 Applications.
255.5 Commitment.
255.6 Closing procedure.
255.7 Advance of payments on obligations.
255.8 Default.
255.9 Cross references.
255.10 Applicability.

Authority: Title XI, Merchant Marine Act, 1936, as amended (46 U.S.C. 1271-1279), and Reorganization Plan No. 4 of 1970, (86 Stat. 909).

Source: 39 FR 17555, May 17, 1974, unless otherwise noted.

§ 255.0 Reprint of Certain Provisions of Title XI of the Merchant Marine Act, 1936, as Amended through the Effective Date of the Federal Ship Financing Act of 1972.

(a) *Exclusions.* This reprint of Title XI excludes all provisions (1) to which this Part 255 does not presently pertain, (2) which pertain exclusively to the Secretary's internal program administration, and (3) which pertain exclusively to vessels other than those in the fishing trade or industry.

(b) *Reprint of Title XI.*

Sec. 1101. As used in this title—

(a) The term "mortgage" includes a preferred mortgage as defined in the Ship Mortgage Act, 1920, as amended, on any vessel of the United States * * * and a mortgage on such a vessel which will become a preferred mortgage when recorded and endorsed as required by the Ship Mortgage Act, 1920, as amended;

(b) The term "vessel" includes all types, whether in existence or under construction, of * * * which are or will be documented under the laws of the United States, fishing vessels whose ownership, will meet the citizenship requirements for documenting vessels in the coastwide trade within the meaning of section 2 of the Shipping Act, 1916, as amended * * *;

(c) The term "obligation" shall mean any note, bond, debenture, or other evidence of indebtedness * * * issued for one of the purposes specified in subsection (a) of section 1104 of this title;

(d) The term "obligor" shall mean any party primarily liable for payment of the principal of or interest on any obligation;

(e) The term "obligee" shall mean the holder of an obligation;

(f) The term "actual cost" of a vessel as of any specified date means the aggregate, as determined by the Secretary of Commerce, of (i) all amounts paid by or for the account of the obligor on or before that date, and (ii) all amounts which the obligor is then obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of such vessel;

(g) The term "depreciated actual cost" of a vessel means the actual cost of the vessel depreciated on a straight-line basis over the useful life of the vessel as determined by the Secretary of Commerce, not to exceed 25 years from the date the vesesl was delivered by the shipbuilder, or if the vessel has been reconstructed or reconditioned the actual cost of the vessel depreciated on a straight-line basis from the date the vessel was delivered by the shipbuilder to the date of such reconstruction or reconditioning on the basis of the original useful life of the vessel and from the date of such reconstruction or reconditioning on a straight-line basis and on the basis of a useful life of the vessel determined by the Secretary of Commerce, plus all amounts paid or obligated to be paid for the reconstruction or reconditioning depreciated on a straight-line basis and on the basis of a useful life of the vessel determined by the Secretary of Commerce; and

(h) The terms "construction," "reconstruction," or "reconditioning" shall include, but shall not be limited to, designing, inspecting, outfitting, and equipping.

* * * * *

SEC. 1103. (a) The Secretary of Commerce, upon application by a citizen of the United States, is authorized to guarantee, and to enter into commitments to guarantee, the payment of the interest on, and the unpaid balance of the principal of, any obligation which is eligible to be guaranteed under this title.

(b) No obligation shall be guaranteed under this title unless the obligor conveys or agrees to convey to the Secretary of Commerce such security interest, which may include a mortgage or mortgages on a vessel or vessels, as the Secretary of Commerce may reasonably require to protect the interests of the United States.

(c) The Secretary of Commerce shall not guarantee the principal of obligations in an amount in excess of 75 percentum * * * of the amount, as determined by the Secretary of Commerce which determination shall be conclusive, paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of a vessel or vessels with respect to which a security interest has been conveyed to the Secretary of Commerce * * *

(d) The full faith and credit of the United States is pledged to the payment of all guarantees made under this title with respect to both principal and interest, including interest, as may be provided for in the guarantee, accruing between the date of default under a guaranteed obligation and the payment in full of the guarantee.

(e) Any guarantee, or commitment to guarantee, made by the Secretary of Commerce under this title shall be conclusive evidence of the eligibility of the obligations for such guarantee, and the validity of any guarantee, or commitment to guarantee, so made shall be incontestable.

* * * * *

SEC. 1104. (a) Pursuant to the authority granted under section 1103(a), the Secretary of Commerce, upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in—

(1) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a vessel or vessels owned by citizens of the United States which are designed principally for * * * commercial use * * * in the fishing trade or industry * * * *Provided, however,* That no guarantee shall be entered into pursuant to this paragraph (a)(1) later than 1 year after delivery, or redelivery in the case of reconstruction or reconditioning of any such vessel unless the proceeds of the obligation are used to finance the construction, reconstruction, or reconditioning of a vessel or vessels, or facilities or equipment pertaining to marine operations;

* * * * *

(4) refining existing obligations issued for one of the purposes specified in (1), (2), or (3) whether or not guaranteed under this title, including, but not limited to, short-term obligations incurred for the purpose of obtaining temporary funds with the view to refinancing from time to time.

(b) Obligations guaranteed under this title—

(1) Shall have an obligor approved by the Secretary of Commerce as responsible and possessing the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the vessel or vessels which serve as security for the guarantee of the Secretary of Commerce;

(2) Subject to the provisions of paragraph (1) of subsection (c) of this section, shall be in an aggregate principal amount which does not exceed 75 per centum of the actual cost or depreciated actual cost, as determined by the Secretary of Commerce, of the vessel which is used as security for the guarantee of the Secretary of Commerce * * *;

(3) Shall have maturity dates satisfactory to the Secretary of Commerce but, subject to the provisions of paragraph (2) of subsection (c) of this section, not to exceed 25 years from the date of delivery of the vessel which serves as security for the guarantee of the Secretary of Commerce or, if the vessel has been reconstructed or reconditioned, not to exceed the later of (i) 25 years from the date of delivery of the vessel and (ii) the remaining years of the useful life of the vessel as determined by the Secretary of Commerce;

(4) Shall provide for payments by the obligor satisfactory to the Secretary of Commerce;

(5) Shall bear interest (exclusive of charges for the guarantee and seruice charges, if any) at rates not to exceed such per centum per annum on the unpaid principal as the Secretary of Commerce determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary of Commerce;

(6) Shall provide, or a related agreement shall provide, that if the vessel used as security for the guarantee of the Secretary of Commerce is a delivered vessel, the vessel shall be in class A-1, American Bureau of Shipping, or shall meet such other standards as may be acceptable to the Secretary of Commerce, with all required certificates, including but not limited to, marine inspection certificates of the United States Coast Guard, with all outstanding requirements and recommendations necessary for retention of class accomplished, unless the Secretary of Commerce permits a deferment of such repairs, and shall be tight, stanch, strong, and well and sufficiently tackled, appareled, furnished, and equipped, and in every respect seaworthy and in good running condition and repair, and in all respects fit for service * * *

* * * * *

(c) (1) The security for the guarantee of an obligation by the Secretary of Commerce under this title may relate to more than one vessel and may consist of any combination of types of security. The aggregate principal amount of obligations which have more than one vessel as security for the guarantee of the Secretary of Commerce under this title may equal, but not exceed, the sum of the principal amount of obligations permissible with respect to each vessel.

(2) If the security for the guarantee of an obligation by the Secretary of Commerce under this title relates to more than one vessel, such obligation may have the latest maturity date permissible under subsection (b) of this section with respect to any of such vessels: *Provided*, That the Secretary of Commerce may require such payments of principal, prior to maturity, with respect to all related obligations as he deems necessary in order to maintain adequate security for his guarantee.

(d) No commitment to guarantee an obligation shall be made by the Secretary of Commerce unless he finds, at or prior to the time such commitment is made, that the property or project with respect to which the obligation will be executed will be, in his opinion, economically sound and in the case of fishing vessels, that the purpose of the financing or refinancing is consistent with the wise use of the fisheries resources and with the development, advancement, management, conservation, and protection of the fisheries resources, and no obligation, unless made pursuant to a prior commitment, shall be guaranteed unless the Secretary of Commerce finds, at or prior to the time the guarantee becomes effective, that the property or project with respect to which the obligation is executed will be in his opinion economically sound and in the case of fishing vessels, that the purpose of the financing or refinancing is consistent with the wise use of the fisheries resources, and with the development, advancement, management, conservation, and protection of the fisheries resources.

(e) The Secretary of Commerce is authorized to fix a fee for the guarantee of an obligation under this title. If the security for the guarantee of an obligation under this title relates to a delivered vessel, such fee shall not be less than one-half of 1 per centum per annum nor more than 1 per centum per annum of the average principal amount of such obligation outstanding * * *. If the security for the guarantee of an obligation under this title relates to a vessel to be constructed, reconstructed, or reconditioned, such fee shall not be less than one-quarter of 1 per centum per annum nor more than one-half of 1 per centum per annum of the average principal amount of such obligation outstanding * * *. For purposes of this subsection (e), if the security for the guarantee of an obligation under this title relates both to a delivered vessel or vessels and to a vessel or vessels to be constructed, reconstructed, or reconditioned, the principal amount of such obligation shall be prorated in accordance with regulations prescribed by the Secretary of Commerce. Fee payments shall be made by the obligor to the Secretary of Commerce when moneys are first advanced under a guaranteed obligation and at least 60 days prior to each anniversary date thereafter. All fees shall be computed and shall be payable to the Secretary of Commerce under such regulations as the Secretary of Commerce may prescribe.

(f) The Secretary of Commerce shall charge and collect from the obligor such amounts as he may deem reasonable for the investigation of applications for a guarantee, for the appraisal of properties offered as security for a guarantee, for the issuance of commitments, * * * and for the inspection of such properties during construction, reconstruction, or reconditioning: *Provided*, That such charges shall not aggregate more than one-half of 1 per centum of the original principal amount of the obligations to be guaranteed.

* * * * *

(h) Obligations guaranteed under this title and agreements relating thereto shall contain such other provisions with respect to the protection of the security interests of the United States (including acceleration and subrogation provisions and the issuance of notes by the obligor to the Secretary of Commerce), liens and releases of liens, payments of taxes, and such other matters as the Secretary of Commerce may, in his discretion, prescribe.

SEC. 1105. (a) In the event of a default, which has continued for 30 days, in any payment by the obligor of principal or interest due under an obligation guaranteed under this title, the obligee or his agent shall have the right to demand, at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than 90 days from the date of such default, payment by the Secretary of Commerce of the unpaid principal amount of said obligation and of the unpaid interest thereon to the date of payment. Within such period as may be specified in the guarantee or related agreements, but not later than 30 days from the date of such demand, the Secretary of Commerce shall promptly pay to the obligee or his agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment: *Provided*, That the Secretary of Commerce shall not be required to make such payment if prior to the expiration of said period he shall find that there was no default by the obligor in the payment of principal or interest or that such default has been remedied prior to any such demand.

(b) In the event of a default under a mortgage, loan agreement, or other security agreement between the obligor and the Secretary of Commerce, the Secretary of Commerce may notify the obligee or his agent of such default and the obligee or his agent shall have the right to demand at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than 60 days from the date of such notice, payment by the Secretary of Commerce of the unpaid principal amount of said obligation and of the unpaid interest thereon. Within such period as may be specified in the guarantee or related agreements, but not later than 30 days from the date of such demand, the Secretary of Commerce shall promptly pay to the obligee or his agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment.

(c) In the event of any payment by the Secretary of Commerce under section (a) or (b) of this section, the Secretary of Commerce shall have all rights in any security held by him relating to his guarantee of such obligations as are conferred upon him under any security agreement with the obligor. Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Secretary of Commerce shall have the right, in his discretion, to complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, or sell any property acquired by him pursuant to a security agreement with the obligor or may place a vessel in the national defense reserve. The terms of sale shall be as approved by the Secretary of Commerce.

(d) Any amount required to be paid by the Secretary of Commerce pursuant to subsection (a) or (b) of this section, shall be paid in cash. * * *

(e) In the event of a default under any guaranteed obligation or any related agreement, the Secretary of Commerce shall take such action against the obligor or any other parties liable thereunder that, in his discretion, may be required to protect the interests of the United States. Any suit may be brought in the name of the United States or in the name of the obligee and the obligee shall make available to the United States all records and evidence necessary to prosecute any such suit. The Secretary of Commerce shall have the right, in his discretion, to accept a conveyance of title to and possession of property from the obligor or other parties liable to the Secretary of Commerce, and may purchase the property for an amount not greater than the unpaid principal amount of such obligation and interest thereon. In the event the Secretary of Commerce shall receive through the sale of property an amount of cash in excess of any payment made to an obligee under subsection (a) or (b) and the expenses of collection of such amounts, he shall pay such excess to the obligor.

SEC. 1106. Whoever, for the purpose of obtaining any loan or advance of credit from any person, partnership, association, or corporation with the intent that an obligation relating to such loan or advance of credit shall be offered to or accepted by the Secretary of Commerce to be guaranteed, or for the purpose of obtaining any extension or renewal of any loan, advance of credit, or mortgage relating to an obligation guaranteed by the said Secretary of Commerce, or the acceptance, release, or substitution of any security on such a loan, advance of credit, or for the purpose of influencing in any way the action of said Secretary of Commerce under this title, makes, passes, utters, or publishes, or causes to be made, passed, uttered, or published any statement, knowing the same to be false, or alters, forges, or counterfeits, or causes or procures to be altered, forged, or counterfeited, any instrument, paper, or document, or utters, publishes, or passes as true, or causes to be uttered, published, or passed as true, any instrument, paper, or document, knowing it to have been altered, forged, or counterfeited, or willfully overvalues any security, asset, or income, shall be guilty of a misdemeanor and punished as provided under the first paragraph of section 806(b) of this Act.

* * * * *

(c) *Interpretation or elaboration.* The following sections of this Part 255 relate only to those provisions of the Act set forth in § 255.0(b).

[39 FR 17555, May 17, 1974, as amended at 39 FR 19944, June 5, 1974]

§ 255.1 Definitions.

The following definitions are in addition to, or supplement, those contained in the Act and set forth in § 255.0(b).

(a) *Fishing vessels.* This term means vessels licensed by the U.S. Coast Guard for operation in the fisheries. The term also includes vessels which process or transport fisheries products, regardless of their licensed trade. Vessels which are licensed both in the fisheries and the coastwise trade must have a U.S. Coast Guard certificate of inspection (under 46 CFR Part 176) for carrying more than six passengers or demonstrate to the Secretary's satisfaction that the vessel's commercial passenger carrying fishing operations will constitute its primary activity.

(b) *Reconstruction or reconditioning.* These terms include rebuilding, replacing, and/or converting any portion of a vessel which involves an actual cost equal to at least 20 percent of such vessel's replacement value or $40,000, whichever is less. A reconstruction or reconditioning project must, however, substantially prolong the useful life of the vessel, increase its value, or adapt it to a different commercial use in the fishing trade or industry, and all or a major portion of the actual cost of such project must ordinarily be classifiable as capital expenditures. If the sum of (1) the age of the vessel proposed to be reconstructed or reconditioned and (2) the terms of the proposed guaranteed obligation financing such reconstruction or reconditioning exceeds 25 years, then in that case only the project will not ordinarily be deemed to be a reconstruction or reconditioning unless it is specifically demonstrated to the Secretary's satisfaction that the project will significantly upgrade the vessel in terms of modernization and efficiency.

(c) *Replacement value.* This term means the estimated cost of replacing a vessel, immediately after its redelivery in a reconstructed or reconditioned state, by newly constructing one substantially similar to it. If the Regional Financial Assistance Division office deems any estimate of replacement value unacceptable, it may require substantiation from at least one marine surveyor or other person or firm qualified to give such an estimate. No estimate of replacement value will be required if the actual cost of reconstruction or reconditioning is $40,000 or more.

(d) *Actual cost.* This term is defined in section 1101(f) of the Act (see §255.0(b)). Actual cost shall not, however, include any amount paid by any Government agency as a subsidy or otherwise; any amount of the cost of equipping a vessel with either excessive fishing gear or certain types of fishing gear (such as pots and/or traps, including lines, buoys and accessory equipment) which will not remain integrally attached to the vessel during its fishing operations; any commitment fees, legal or accounting fees or expenses, fees or commissions or charges for securing any loan or mortgage or other borrowing, or post-delivery vessel operating expense; any items not capitalizable except interest under generally accepted accounting principles (except in the case of reconstruction or reconditioning).

(e) *Depreciated actual cost.* This term means the actual cost after (1) first deducting from such actual cost a salvage value equal to 10 percent of such actual cost, (2) dividing the resulting amount by twice the number of years in the vessel's useful life in order to obtain the semi-annual depreciation, and (3) deducting from actual cost the semi-annual depreciation associated with each full 6 month interval elapsed from vessel delivery and/or redelivery date through the vessel's useful life. Intervals of less than a full 6 months will not be considered for the purpose of determining depreciated actual cost.

(f) *Useful Life.* For purposes of guarantee under this Part 255: The useful life of new vessels costing less than $300,000 shall not ordinarily exceed 15 years from delivery date; the useful life of new vessels costing more than $300,000 shall not ordinarily exceed 20 years from delivery date; and the useful life of reconstructed or reconditioned vessels shall not ordinarily exceed 10 years from redelivery date. The Secretary may designate vessels costing less than $300,000 in certain fisheries as being eligible for maturities up to 20 years. Criteria used in such determinations may include, but shall not be limited to the following: (a) vessels whose economically useful lives do exceed 15 years, (b) the earnings capability of any particular fishery, (c) the status of any fishery resource, (d) the number of vessels operating in any fishery and (e) such other factors as the Secretary may find pertinent. Useful life shall be reduced by 1 year for each full 1-year interval elapsed from vessel delivery and/or redelivery date. Intervals of less than a full 1 year will not be considered for the purpose of determining remaining useful life.

(g) *Maturity Date.* This term means the date upon which a guaranteed obligation matures. The maturity date shall not exceed the date upon which useful life ends. When a guaranteed obligation matures more than 15 years from inception, the associated vessel mortgage shall require, at the tenth year, completion (at the mortgagor's expense) of a survey of the mortgaged vessel by a qualified marine surveyor acceptable to the Secretary and accomplishment of the surveyor's recommendations within 6 months of their rendition (unless the Secretary allows a longer period or waives some or all of the surveyor's recommendations). At the Secretary's discretion, this same provision may be extended to maturities of 15 years or less and the Secretary may, depending on the circumstances of each case, require additional protection for maturities in excess of 15 years. The consequence of failing to fulfill these provisions shall, at the Secretary's discretion, be mortgage default, debt acceleration, and mortgage foreclosure.

(h) *Project.* This term means the construction, reconstruction, or reconditioning of a vessel through an act of work or a series of acts of work, to be completed within 1 year from the date work is first commenced, unless otherwise consented to by the Secretary.

(i) *Facilities or equipment pertaining to marine operations.* This term includes, but is not necessarily limited to, fishing gear and equipment, docks, unloading facilities, fuel storage facilities, holding facilities, and processing facilities directly supporting commercial fishing operations.

(j) *Delivery or redelivery date.* The delivery or redelivery date shall be the date the vessel was first documented (delivery) or last redocumented (redelivery) under the laws of the United States. If a reconstruction or reconditioning does not, however, require redocumentation, then the redelivery date shall ordinarily be the effective date, as determined by the Secretary, possession of the vessel is redelivered to its owner.

(k) *Secretary.* This term means the Secretary of Commerce or his delegate.

(l) *Act.* This term means Title XI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1271-1279).

[39 FR 17555, May 17, 1974, as amended at 42 FR 48339, Sept. 23, 1977; 43 FR 9153, Mar. 6, 1978; 45 FR 49083, July 23, 1980]

§ 255.2 Purpose and priority.

(a) *Purpose.* The major objective of the Fishing Vessel Obligation Guarantee program is to facilitate the capital market's responsiveness to the general investment capital needs of the U.S. commercial fishing industry.

(b) *Priority.* Within the framework of paragraph (a) of this section, the Secretary shall afford priority to those projects which most facilitate the following:

(1) Increasing the productivity or efficiency of fishing vessels, either

through technical advances or otherwise.

(2) Fostering the development of underutilized fisheries resources and/or stimulating the shifting of vessels from overutilized to less utilized fisheries resources.

(3) Protecting, preserving, or improving national utilization of presently international fisheries resources by strengthening the domestic fishing fleet in competition with foreign vessels.

(c) The Secretary will, consequently, afford the highest program priority to those projects which demonstrate significant potential for facilitating the greatest number of the items enumerated as paragraphs (b)(1) through (3) of this section. This Part 255 will be construed and applied toward the end of encouraging such projects. The Secretary may encourage such projects by waiving, in his discretion and as a matter of policy, any requirement contained in this Part 255 and not otherwise expressly required by the Act.

[39 FR 17555, May 17, 1974, as amended at 39 FR 19444, June 5, 1974]

§ 255.3 Eligibility requirements.

(a) *Construction; conditional fisheries.* An obligation for construction of a vessel (vessel "Y") shall ordinarily be eligible for guarantee only if such vessel is designed, outfitted, and equipped to operate, and/or is operating and will operate, as the case may be, in a fishery which the Secretary has not, prior to submission (postmark date controls if mailed; actual date of receipt if personally delivered) of an application for a guarantee or a commitment to guarantee, adopted as restricted in accordance with Part 251 of this chapter. Such an obligation shall nevertheless be eligible for guarantee if the obligor causes (within 1 year after the delivery date of vessel "Y") to be permanently removed from all fishing, or placed permanently in a fishery not then adopted as restricted in accordance with Part 251 of this chapter, under such conditions as the Secretary deems necessary or desirable, a vessel (vessel "Z") which has during the previous 18 months operated substantially in the same fishery as the vessel constructed or to be constructed and which has a fishing capacity substantially equivalent to the vessel constructed or to be constructed. What constitutes substantially equivalent fishing capacity for the purpose of this section shall be a matter for the Secretary's discretion. Ordinarily, in exercising his discretion about what does or does not constitute substantially equivalent fishing capacity, the Secretary will take into consideration (1) the average size of vessels constructed for the restricted fishery in question at the time vessel "Z" was constructed (or, if constructed for a different fishery, the average size of vessels in the restricted fishery at the time vessel "Z" entered it), (2) the average size of vessels constructed for the restricted fishery at the time vessel "Y" was or will be constructed, and (3) such other factors as the Secretary may deem material and equitable, including the length of time the applicant has owned and operated vessel "Z". The Secretary will consider these factors, and exercise his discretion, in such a way as to encourage use of this program by established fishermen who have owned for substantial periods vessels which need to be replaced, even though a "Z" vessel may have been constructed at a time which dictated a lesser fishing capacity than dictated for a "Y" vessel at the time of application for guarantee.

(b) *Reconstruction or reconditioning; conditional fisheries.* An obligation for reconstruction or reconditioning of a vessel shall ordinarily be eligible for guarantee only if such vessel is designed or redesigned, outfitted, and equipped to operate, and/or is operating and will operate, as the case may be, in a fishery which the Secretary has not, prior to submission (postmark date controls if mailed; actual date of receipt if personally delivered) of an application for a guarantee or a commitment to guarantee, adopted as restricted in accordance with Part 251 of this chapter. Such an obligation shall nevertheless be eligible for guarantee if the vessel reconstructed or reconditioned, or to be reconstructed or reconditioned, had operated substantially for at least the last 36 months before its reconstruction or reconditioning in substantially the same fishery in which it is operating or will operate after its reconstruction or reconditioning.

(c) *Obligations.* Each obligation guaranteed under this Part 255 shall:

(1) Have an obligee approved by the Secretary as responsible and able properly to service the obligation.

(2) Provide that the obligation shall not be assigned unless the assignee is first approved by the Secretary.

(3) Contain such terms and provisions as the Secretary in his discretion may require with respect to amortization, interest, application of payment, default, acceleration and immediate payability of the entire outstanding indebtedness, payment of expenses, renewal, extension, modification, surrender, compromise, release, exchange, substitution, indulgence, assignment, guarantee, demand for payment under the guarantee, payment under the guarantee, and such other matters as the Secretary in his discretion may require.

(4) Be evidenced by an obligation satisfactory, both as to form and substance, to the Secretary (ordinarily, the form of obligation will be prepared by the Secretary for the parties; approval and acceptance).

(5) Be secured by such collateral under such form of loan agreement, contract, mortgage, indenture, or other security agreement between the Secretary and the obligor as the Secretary in his discretion may deem necessary or appropriate to protect the interest of the United States. Such form of loan agreement, contract, mortgage or indenture, or other security agreement shall:

(i) Contain such terms and conditions as the Secretary in his discretion may require, including but not limited to those related to: Operation of a vessel, citizenship, ownership, documentation, validity and enforceability of obligations, warranting and defending title and possession, liens, insurance, sale, mortgage, transfer, assignment, charter, discharge of libel or suit or levy, repair and maintenance, payment of taxes or fines or penalties or other assessments or charges, reimbursement of the Secretary for the Secretary's expenses, the keeping of books and records, access to them, reports, payment of guarantee fees, default, foreclosure, seizure, retaking mortgaged property, payment of the guaranteed obligation, use and operation and location of mortgaged property, maintenance of existence and right to do business, acquisition or sale of assets, dividends, distribution or sale or purchase or retirement of stock, advances, compensation, loans, gifts, bonuses, merger, consolidation, affiliates, subsidiaries, execution of further obligations and documents and assurances, bankruptcy, assignment for benefit of creditors, forfeiture, receivership, petition for reorganization, disclosure, misrepresentation, false statement, fraud, maturity, acceleration of maturity, payment of principal and interest, the Secretary's right to sell or operate or otherwise dispose of mortgaged property, appointment of the Secretary as the obligor's true and lawful attorney, consent to jurisdiction, subordination, standby, guaranty, and such other matters as the Secretary in his discretion may require.

(ii) Be evidenced by a form of loan agreement, contract, mortgage, indenture, or other security agreement satisfactory, both as to form and substance, to the Secretary (ordinarily, the form of the documents will be prepared by the Secretary for the obligor's approval and acceptance).

(iii) Provide for (none of the following paragraph (c)(5)(iii)(*a*) through (*g*) of this section apply where application for a guarantee is first made after a completed vessel is delivered to its owner; only some of them apply when the Secretary, prior to delivery of a completed vessel to its owner, issues a commitment to guarantee an obligation whose proceeds will repay an interim unguaranteed lender upon delivery of a completed vessel to its owner; all of them apply when the Secretary guarantees an obligation whose proceeds finance construction, reconstruction, or reconditioning during the interim before a completed vessel is delivered to its owner):

(*a*) Payment first, from sources other than the guaranteed obligation, by and for the account of the obligor, of not less than 25 percent of the actual cost, and thereafter for payment by the obligee directly to the shipyard or other contractor, except where payment reimburses the obligor for amounts expended by or for the account of the obligor toward payment of the actual cost in excess of the aforesaid 25 percent of the actual cost. No payment shall, however, be made by the obligee until work representing 25 percent of the actual cost shall have been performed and paid for and payments by the obligee shall at no time exceed 75 percent of the actual cost of work performed to the date of payment.

(*b*) Vesting of title to the vessel in the obligor according to payments made subject only to the lien or other rights of the shipyard or contractor for additional amounts due and unpaid or the lien or other rights of the Secretary in accordance with paragraph (c)(5)(iii)(*f*) of this section.

(*c*) The shipyard or contractor furnishing satisfactory insurance and a satisfactory performance and payment bond.

(*d*) Performance of work substantially in accordance with the contract plans and specifications approved by the Secretary; approval by the Secretary of all significant changes, and all changes whatsoever which decrease the actual cost, under the contract prior to commencement of work involving the changed specifications; and furnishing of all technical material necessary for approval of the changes.

(*e*) Furnishing to the Secretary two copies of design plans, specifications, sketches, and working schedules promptly after approval by the owner; furnishing two copies of correspondence regarding work being done or to be done if required by the Secretary; and furnishing one copy of the vessel's certificates, documents, and test reports if required by the Secretary.

(*f*) A security agreement on a vessel being constructed, assignment to the Secretary of the construction contract, and/or such other security or collateral as the Secretary in his discretion may require.

(*g*) If the Secretary's guarantee does not terminate with delivery or redelivery, then execution and delivery by the obligor of a first preferred mortgage of the delivered or redelivered vessel and such other collateral documents and assurances as the Secretary in his discretion may require.

(d) *Economic soundness.* The property or project with respect to which the obligation will be executed shall not ordinarily be deemed to be economically sound unless:

(1) The applicant obligor submits evidence satisfactory to the Secretary demonstrating that at the time of execution of the guarantee the obligor will then have financial resources equal to at least the aggregate of the following:

(i) An amount equal to the difference between the actual cost of construction, reconstruction, or reconditioning (less any amount paid on account thereof) and the amount of the obligation proposed for guarantee.

(ii) Working capital sufficient to support operations and to provide adequately for operational contingencies. This should equal at least 8 percent (but more if, in the Secretary's discretion, circumstances warrant it) of the total capitalizable cost of the vessel to the obligor. It should, ideally, consist entirely of net working capital (current assets minus current liabilities). Some portion of it may, however, at the discretion of the Secretary, consist of readily convertible investments, other assets readily capable of being used to generate net working capital, lines of credit, or a co-maker or guarantor with sufficient financial resources to guarantee payment of the first year or more of installments maturing under the guaranteed obligation. Consideration will be given to the individuality of each applicant obligor's financial circumstances. On balance, however, an applicant obligor must be able successfully to demonstrate to the Secretary's satisfaction that sufficient (after making provision for a conservation estimate of initial operational cash flow) working capital is or will be readily available to support the vessel's operation and to provide adequately for normal contingencies.

(iii) Adequate arrangements for payment of the first year's premium for vessel insurance (including hull and machinery, breach of warranty, protection and indemnity if applicable, and such other insurances as the Secretary, in his discretion, may require). Ideally, the premium for all required insurances should be paid in advance. The Secretary will, however, consider allowing premium financing of some portion of the total premium if, in his discretion, an applicant obligor's overall financial situation warrants such.

(iv) The first year's obligation guarantee fee.

(v) Any additional amounts determined by the Secretary to be necessary or appropriate to the project under the circumstances of each individual case. The availability of financial resources required by this paragraph (d) shall not, however, be the full test of economic soundness, but merely the minimum acceptable.

(2) The obligor and its project is deemed satisfactory by the Secretary after having taken into account the following credit factors:

(i) The obligor must be of established integrity. Responsible and cooperative management must be evident. Field analysis shall include a careful evaluation of character, experience, and past record and prospects of management in finance and fisheries operations.

(ii) The obligor must prospectively be able to meet obligations, continue business operations, and protect the Secretary against undue risk. The obligor's (and that of its related interests) total assets controlled, equity owned, contingent liabilities, and history of earnings to date are significant measures of financial responsibility and shall be carefully evaluated during field analysis.

(iii) A determination of the obligor's repayment capacity requires a careful field analysis of cash flow history and a projection from that history of cash flow prospects. A cash flow projection shall reflect cash generation from the obligor's fisheries operations and all other sources. Ordinarily the projection of cash flow from fisheries operations shall be sufficient to meet all obligations and provide a reasonable remainder for normal contingencies. Field analysis shall include a cash flow projection over the life of the obligation proposed for guarantee which shall be based upon a careful evaluation of the obligor's vessel, type of fisheries operation, area of operation, and the present and prospective status, over the life of the guarantee, of the fisheries resources for which the obligor will operate. The prospects of cash flow, projected from the obligor's past cash flow history and suitably adjusted for the change in the obligor's circumstances to be effected by the obligation proposed for guarantee, shall be compared with an average cash flow history of successful operators (compiled and maintained by each Regional Financial Assistance Division office) of similar vessels operating in the same area for the same fisheries resources. Whenever the obligor's cash flow is projected to be materially below that average, the application shall ordinarily be declined.

(iv) Collateral requirements are dictated by the strengths or weaknesses of all credit factors. The collateral required shall reasonably protect the Secretary and provide the necessary control of equity and repayment. Personal liability or entity liability, in the form of comakers or guarantors, shall be required as circumstances warrant in order to provide additional security for the Secretary's guarantee and to assure that the assets of the principal interests which stand to benefit most by the project proposed for guarantee are held accountable. Careful field analysis shall be made of the credit factors relevant to such comakers or guarantors, and their related interests, in order to assure that their liability actually provides the desired additional security for the Secretary's guarantee. The availability of a co-maker or guarantor with a strong financial position is a material credit factor and may be used to offset weak credit factors otherwise associated with an applicant obligor.

(v) The availability to the obligor of able and experienced masters and crews is of primary importance and may affect the weight placed upon other credit factors. Field analysis shall include a careful evaluation of the prospective master's ability and experience if such a master has been chosen and/or of the arrangements made to secure the services of able and experienced masters and crews.

(vi) Every reasonable effort shall be made, prior to execution of a guarantee or a commitment to guarantee, to determine that the project under application will result in a profit by virtue of the fisheries operations intended to be pursued, the estimated expenses of the obligor, the earnings projected for the project, the character, integrity, and managment ability of the obligor, the availability to the obligor of experienced masters and crews, and all other relevant factors. Economic soundness, particularly in the area of fisheries operations, is not, however, an exact science A project must be tested as best it can and a judgment must be made whether or not that project has a reasonable chance of success.

(e) *Bids.* It is in the best interest of the obligor to request and receive at least three competitive bids for the project based upon plans and specifications previously prepared by a certified naval architect (whose cost may be included in the actual cost for purpose of guarantee). All applicant obligors shall be counseled that it is in their best interest to do so.

(1) The Secretary ordinarily shall, nevertheless, require competitive bidding only where one (or more) of the following apply:

(i) Either (or both) the project is projected to cost $500,000 or more or the project vessel to be constructed (excluding reconstruction or reconditioning) will be 80-feet registered length or over.

(ii) There is a financial or other relationship between the applicant obligor and the contractor proposed for the project.

(iii) The project is unique, the Secretary deems the cost proposed to be unreasonable, or, for any other reason, the Secretary believes himself unable or unqualified to establish an amount in accordance with paragraph (e)(2) of this section.

(2) In all instances other than paragraph (e)(1) (i) through (iii) of this section, the Secretary, taking into consideration the actual cost and/or any other factor deemed by him to be relevant, will determine an amount which fairly and reasonably, in his discretion, would have been the actual cost had competitive bids been obtained, which determination shall be conclusive for the purpose of guarantee.

(3) In the instance of any paragraph (e)(1) (i) through (iii) of this section, each project shall be undertaken by the firm submitting the lowest of not less than three, responsive, competitive bids unless:

(i) Less than three, responsive, competitive bidders respond to properly, in the opinion of the Secretary, issued invitations, in which case the Secretary may make a determination as if paragraph (e)(2) of this section were the case.

(ii) The Secretary approves acceptance of a higher bid because, in the opinion of the Secretary, the lowest bidder cannot adequately accomplish the project.

(iii) The Secretary approves acceptance of a higher bid and the obligor agrees that the amount by which the higher bid exceeds the lowest bid shall not constitute any portion of actual cost for the purpose of guarantee.

(iv) The Secretary disapproves all bids as unreasonable, in which case new invitations may be issued to bidders or the Secretary may make a determination as if paragraph (e)(2) of this section were the case.

(v) Construction, reconstruction, or reconditioning has been commenced or completed without having first obtained competitive bids, in which event the Secretary will make a determination as if paragraph (e)(2) of this section were the case.

(f) *Seaworthiness.* All vessels constructed, reconstructed, or reconditioned with the aid of a guaranteed obligation, whether or not such vessels serve as security for the Secretary's guarantee, shall be certified as in all respects fit and sufficient to withstand all foreseeable conditions of the intended service. For all newly constructed vessels (reconstructed or reconditioned vessels at the Secretary's option) 80-feet registered length and over, such certification shall be provided by a certified naval architect (whose cost may be included in the actual cost for the purpose of guarantee). The naval architect's certification required for vessels 80-feet registed length or over need not, for the Secretary's purposes, involve *in situ* inspection by the naval architect during the construction interim (although such is generally more desirable). For vessels less than 80-feet registered length, such certification shall be provided by any competent authority (whose cost may be included in the actual cost for the purpose of guarantee) approved by the Secretary. Regardless of vessel length (or any other factors), however, the Secretary, at his discretion, reserves the right to require such additional tests or proofs as individual circumstances might warrant.

(g) *Guarantee fee.* The fee fixed by the Secretary for any guarantee shall be:

(1) Three-quarters of 1 percent of the average outstanding principal amount of the guaranteed obligation.

(2) Unless otherwise specified by the Secretary, paid by the obligor's check payable to "NMFS, NOAA, FSFF—Commerce" and delivered to the National Marine Fisheries Service addressed to the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, 11420, Rockville Pike, Attention NBOC 1, Room 122, Rockville, Maryland 20852, together with identification of the specific guarantee to which the fee relates and the period covered by the payment.

(3) Fully earned when first due and no refund of earned fees will be made by the Secretary in the event the guarantee is terminated.

(4) If deficient, fully paid within 30 days of the Secretary's notice to the obligor of the amount of such deficiency.

[39 FR 17555, May 17, 1974; 39 FR 19944, June 5, 1974, as amended at 42 FR 32249, June 24, 1977; 43 FR 9154, Mar. 6, 1978]

§ 255.4 Applications.

(a) *Purpose.* Applications may be for guarantee of an obligation relating to a vessel to be constructed, reconstructed, or reconditioned; a delivered or redelivered vessel; both, or a commitment to guarantee an obligation for any of the above. Applications need not include a proposed obligee until such a time as the Regional Financial Assistance Division office requires the same.

(b) *Where filed.* Applications shall be filed in duplicate with the Regional office of the National Marine Fisheries Service's Financial Assistance Division corresponding to the region in which the obligor conducts its business on an application form furnished by the Service except that, in the Secretary's discretion, an application made other than by use of the prescribed form may be considered if the application contains information deemed to be sufficient.

(c) *Processing of applications.* If it is determined on the basis of a preliminary review that the application is complete and appears to be in conformity with the Act and this Part 255, the Regional Financial Assistance Division office will assign the application a Docket Number and forward one copy to the Chief, Financial Assistance Division, National Marine Fisheries Service, Washington, D.C. 20235. The Regional Financial Assistance Division office will then conduct a field investigation of the application. After completion of the field investigation, an appropriate report will be sent to the Chief, Financial Assistance Division, National Marine Fisheries Service, Washington, D.C. 20235 (unless and until such a time as such reports, or any portion of them, are no longer, for certain classes of cases, required to be so sent). The application and all supporting documents must be filed in sufficient time to permit the Secretary to make a full and complete investigation and to take all other action required in respect thereto, and in any event not later than 60 days prior to the date anticipated for closing the transaction.

(d) *Books, records, and reports.* The Secretary shall have the right to inspect such books and records, including tax returns, of the applicant as the Secretary in his discretion may deem necessary. A commitment to guarantee an obligation shall be made only upon the agreement of the obligee and obligor to furnish the Secretary, promptly upon his request, such reasonable material and pertinent reports, evidence, proof, and information as he may require in connection with a guarantee granted or applied for, and to permit the Secretary, upon his request, to make such reasonable examination and audit of records and books of account as the Secretary may deem necessary in connection with a guarantee granted or applied for.

(e) *Inspection of property.* The Secretary or his agent shall have access at all reasonable times to all vessels or other security with respect to which an obligation is guaranteed or for which an application for guarantee has been filed.

(f) (1) *Filing Fee.* The filing fee for all applications (other than those in paragraph (f)(3) of this section) shall be and amount equal to ¼ of 1 percent of the first $1,000,000 (or portion thereof) of the principal amount of the obligation to be guaranteed and ⅛ of 1 percent of the balance of that obligation. This filing fee will be retained by the Secretary regardless of the application's disposition.

(2) *Commitment fee.* The commitment fee for all approved applications (other than those in paragraph (f)(3) of this section) shall be an amount equal to ¼ of 1 percent of the first $1,000,000 (or portion thereof) of the principal amount of the obligation to be guaranteed and ⅛ of 1 percent of the balance. This commitment fee is due when the Secretary first advises the applicant that its application for a guarantee has been approved and must be received by the Secretary before the actual commitment is issued. This amount, once the Secretary's commitment is issued, will be retained by the Secretary regardless of the commitment's subsequent disposition.

(3) *Refinancing or assumption fee.* The fee for refinancing or assuming previously guaranteed obligations shall be ¼ of 1 percent of the principal amount of the guaranteed obligation to be refinanced or assumed. This fee must accompany the application for refinancing or assumption and will be retained by the Secretary regardless of the application's disposition. Where a refinancing or assumption serves mainly to protect the Secretary's interest (rather than principally as a convenience to the parties involved) the assumption fee may, in the Secretary's discretion, be waived.Where a refinancing or assumption does not involve the substitution of one wholly different obligor for another (such as, for example, the incorporation of a previously unincorporated obligor rather than the substitution of wholly different obligors which necessitate new credit and feasibility analysis), the refinancing or assumption fee may be in an amount equal to the Secretary's full actual cost (but in no event less than $250).

(4) *Where payable.* All checks should be made payable to "NMFS, NOAA, FSFF—Commerce" and delivered to the Regional National Marine Fisheries Service Office processing the application involved.

[39 FR 17555, May 17, 1974, as amended at 42 FR 32249, June 24, 1977; 42 FR 52424, Sept. 30, 1977; 45 FR 49083, July 23, 1980]

§ 255.5 Commitment.

A commitment to guarantee an obligation will, subject to the restrictions of the Act, be issued by the Secretary when such a commitment is required prior to the actual execution of the obligation. This commitment will provide that the Secretary will guarantee an obligation and will further state the terms and conditions under which the guarantee will be issued. It will also contain the covenants to be accepted by the obligee and obligor. No commitment, nor any amendment to a commitment, shall exist unless reduced to writing and duly executed by the obligor, the obligee, and the Secretary.

§ 255.6 Closing procedure.

The guarantee shall take effect upon payment of the first year's guarantee fee and execution of the guarantee by all parties required to execute.

§ 255.7 Advance of payments on obligations.

The Secretary shall have the discretion to make or commit to make an advance or advances of installment payments on guaranteed obligations based on the determination that the obligor will be unable to do so and there is a reasonable expectation that such advances will be repaid or that it is in the Secretary's best interest to make such advances. The terms of an advance shall be satisfactory to the Secretary and shall include but not necessarily be limited to:

(a) The interest rate shall be equal to the greater of: (1) the sum of the effective interest rate borne by the guaranteed obligation and a guarantee fee computed in accordance with § 255.3(g)(1); (2) the sum of the interest rate Treasury would charge the Federal Ship Financing Fund for a similar borrowing of like maturity and a guarantee fee computed in accordance with § 255.3(g)(1); or (3) the New York City prime rate of interest.

(b) The advance may have a maturity date no later than that of the guaranteed obligation.

(c) The advance shall be repayable under conditions satisfactory to the Secretary.

(d) As long as any advance is outstanding, no dividends can be paid without the prior written consent of the Secretary provided, however, that if the obligation and such advance or advances are assumed by a non-affiliated company which was approved by the Secretary, this dividend restriction shall not apply unless it is expressly required by the Secretary.

(e) The advance, both as to principal and interest, shall be secured by the existing First Preferred Ship Mortgage on the financed vessel given by the Obligor to the Secretary and by such other additional collateral as the Secretary may require.

(f) Whether or not to make an advance shall be a matter of the Secretary's discretion and shall be governed by what the Secretary considers to be in his/her own best interest. No advances shall be made where the obligor has alternative resources from which funds sufficient to pay installments on the guaranteed note could be generated.

[45 FR 37853, June 5, 1980]

§ 255.8 Default.

In the event of default and the Secretary's payment as a result thereof of any portion of a guaranteed obligation, an investigation will be promptly made to determine if the interest of the United States requires, in the Secretary's discretion, immediate foreclosure upon the Secretary's security. If a determination is made that the interest of the United States does not require immediate foreclosure and the obligor demonstrates to the Secretary's satisfaction that all defaults can and will be remedied, the Secretary may, in his discretion and under such terms and conditions as he may prescribe, enter into a written agreement with the obligor allowing it an additional period, ordinarily not to exceed 7 months from the date of the Secretary's payment of the guaranteed obligation (but for such shorter or longer periods as the Secretary may in his discretion prescribe), in which to remedy all defaults and pay to the Secretary the full amount owed the United States. Such an agreement shall provide for the obligor's performance of regular and periodic conditions designed to assure remedy of all defaults and payment to the Secretary of the full amount owed the United States within the period allowed. Such an agreement shall not constitute the Secretary's waiver of any past, present, or future default, but shall merely allow the obligor to possess and operate the Secretary's security at the Secretary's pleasure. If, before expiration of the period allowed, the obligor has substantially remedied all defaults (and the Secretary's payment has been of the whole of the guaranteed obligation), the Secretary in his discretion may entertain an application for the guarantee of another obligation (to the extent otherwise qualified and eligible under the Act and this Part 255) which aids in financing the amount owed the United States. In any event, the Secretary will ordinarily commence foreclosure proceedings or such other action as the Secretary may in his discretion deem necessary or appropriate to recovery of the full amount owed the United States if such amount is not paid to the Secretary on or before expiration of whatever period the Secretary allows.

[39 FR 17555, May 17, 1974. Redesignated at 45 FR 37853, June 5, 1980]

§ 255.9 Cross references.

Parties considering a Title XI guarantee should be aware of the following:

(a) Part 259 of this chapter establishes the conditions under which Capital Construction Funds for fishing vessels may be established under the provisions of section 21 of the Merchant Marine Act of 1970 (84 Stat. 1018) which amended section 607 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1177). These provisions allow deferment of taxation on certain income, including that derived from fishing operations, when such income is deposited into a Capital Construction Fund for subsequent qualification as a withdrawal for acquisition, construction, or reconstruction of, among other things, fishing vessels. Such income may, for example, under certain circumstances be deposited and withdrawn for the purpose of paying the installments of an obligation guaranteed under this Part 255.

(b) Part 251 of this chapter establishes certain fisheries for which the availability of both Title XI guarantees and Capital Construction Funds may, from time to time, be restricted under certain conditions to certain purposes.

[39 FR 17555, May 17, 1974. Redesignated at 45 FR 37853, June 5, 1980]

§ 255.10 Applicability.

The revisions of § 255.3(g) and § 255.4(f) accomplished by this part shall apply only to applications for guarantee received (postmark date controls if mailed; actual date of receipt if personally delivered) on or after May 17, 1974.

[39 FR 17555, May 17, 1974. Redesignated at 45 FR 37853, June 5, 1980]

PART 256—FISHING VESSEL CONSTRUCTION DIFFERENTIAL SUBSIDY PROCEDURES

Sec.
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256.11 Furnishing of information.

AUTHORITY: Sec. 10, 74 Stat. 214, as amended; 46 U.S.C. 1410.

SOURCE: 31 FR 16049, Dec. 15, 1966, unless otherwise noted.

§ 256.1 Basis and purpose.

(a) The Act of June 12, 1960 (Pub. L. 86-516), as amended and hereinafter referred to as the Act, authorizes the Secretary of the Interior to pay a subsidy for the construction of fishing vessels in shipyards of the United States.

(b) The purpose of this part is to prescribe rules and regulations governing the payment of these subsidies.

§ 256.2 Definitions.

(a) *Secretary.* The Secretary of the Interior or his authorized representative.

(b) *Administrator.* The Maritime Administrator in the Department of Commerce or his authorized representative.

(c) *Director.* The Director, Bureau of Commercial Fisheries, Department of the Interior, or his authorized representative.

(d) *Person.* Individual, association partnership or corporation, or any one or all as the context requires.

(e) *Fishery.* A segment of the commercial fishing industry engaged in the catching of a single species or a group of species of fish and shellfish. Any other species taken must be caught incidentally while fishing for and using gear designed for the capture of the species comprising the fishery.

(f) *Expanded areas.* Fishing grounds not usually fished by the majority of the vessels operating in the fishery for which the proposed vessel is designed.

(g) *Newly developed gear.* The most modern gear available that is suitable for use in the fishery for which the proposed vessel is designed.

§ 256.3 Eligibility requirements.

(a) Vessel will be of advance design: In order to be considered to be of advance design, the vessel must be designed to have significant advantages in utility and efficiency over a significant number of vessels engaged in the fishery in which the proposed vessel is designed to operate.

(b) No economic hardship to efficient vessel operators: The determination that operation of a proposed vessel will not cause economic hardship to efficient vessel operators already operating in that fishery shall be made by the Secretary after notice and hearing, taking into consideration the condition of the resource, the efficiency of the vessels and gear being operated in that fishery compared with the proposed vessel, the prospects of the market for the species caught, and the degree and duration of any anticipated economic hardship.

(c) Aid in the development of the U.S. fisheries: For the vessel to aid in the development of the U.S. fisheries under conditions that the Secretary considers to be in the public interest, the vessel must be a modern vessel which will upgrade the fleet. Special consideration will be given to vessels which will provide a significant contribution in helping the domestic fishery meet foreign competition.

(d) The applicant possesses the ability, experience, resources and other qualifications necessary to enable him to operate and maintain the proposed new fishing vessel. In making this determination, the Secretary will inquire into the economic feasibility of the fishing venture and will require reasonable assurance that the applicant can operate the vessel profitably.

§ 256.4 Applications.

Applications for a subsidy shall be made on forms prescribed by the Secretary and shall be filed with the Director, Bureau of Commercial Fisheries, Washington, D.C. The applications must be accompanied by three copies of the cross section, deck arrangement, outboard profile, and specifications of the proposed vessel. The Secretary may require such additional complete detailed construction plans as may be necessary after a review of the application and accompanying plans and specifications.

§ 256.5 Notice and hearing.

After receipt of an application eligible on its face for a construction differential subsidy the Director will publish a Notice of Hearing on a Subsidy Application in the FEDERAL REGISTER and hold hearings in accordance therewith. The purpose of the hearing will be to provide any person who feels he will be economically injured by the construction of the proposed vessel to cross-examine witnesses and/or present evidence that the operation of such vessel will cause economic hardship to efficient vessel operators already operating in the fishery for which the vessel is designed. Hearing procedures will be held in accordance with Part 257 of this subchapter.

§ 256.6 Subsidy contract.

(a) A contract for the payment of the subsidy will take effect when all contracts for the construction of such vessel, have been approved by the Administrator and the subsidy contract has been signed by the Secretary and the applicant; and

(b) The contract shall contain a finding of the useful life of the vessel as determined by the Secretary to be used in computing the amount of the total depreciated construction subsidy to be repaid to the Secretary in accordance with section 9 of the Act.

§ 256.7 Vessel operations.

(a) If the owner of a fishing vessel constructed with the aid of a subsidy desires to operate it in a different fishery than the one for which is was designed because of an actual decline in that particular fishery, he shall submit an application to the Secretary for permission to transfer the operations of the vessel to a different fishery. The application shall contain data showing the decline in the fishery for which the vessel was designed, how this decline is making the operation of the vessel uneconomical or less economical, and why the transfer will not cause economic hardship or injury to efficient vessel operators already operating in the fishery to which he wishes to transfer operations.

(b) Upon receipt of such an application the Secretary will publish a Notice of Hearing on an Application to Change Fishery in the Federal Register and hold hearings in accordance therewith. The purpose of the hearings will be to provide any person who feels he will be economically injured by said transfer of fishing operations an opportunity to cross-examine witnesses and/or present evidence that such a transfer of operations will cause economic hardship or injury to efficient vessel operators already operating in the fishery to which the vessel's operations would be transferred. Hearing procedures will be held in accordance with Part 257 of this subchapter.

§ 256.8 Penalties.

In case the Secretary shall find that a vessel has operated contrary to the provisions of the Act or of regulations issued thereunder, he shall immediately notify the owner in writing of the specific acts involved and the amount of the penalty. The vessel owner may appeal such a finding to the Secretary in writing within 30 days of the date of mailing such finding to the last known address of the vessel owner. The amount of penalty assessed in any 1 year shall be equal to the total subsidy paid multiplied by the ratio that 1 year bears to the total number of years determined, by the Secretary, as the useful life of the vessel: *Provided, however,* That if the amount is not paid within 60 days after receipt of notice then the amount due shall be the total amount of the subsidy paid depreciated to the beginning of the year in which the vessel operated unlawfully. Any amount due hereunder shall constitute a maritime lien against the vessel effective at the time the Secretary determines that the vessel has operated in violation of the Act or regulations.

§ 256.9 Inspection of vessels.

The Secretary or the Administrator shall have access at all times to all vessels which are being constructed under a contract providing for a construction subsidy provided for by the Act.

§ 256.10 Payment of subsidy.

(a) Subsidy payments will be paid in accordance with the terms of the subsidy contract. No subsidy payments shall be made until the entire amount of the applicant's share of the subsidized construction cost has been paid. If the amount of subsidy exceeds 30 percent of the subsidized construction cost, an amount equal to at least 30 percent of the subsidized construction cost shall be withheld until (1) the Maritime Administrator has certified that the vessel has been completed in accordance with the approved plans and specifications, and (2) all amounts due by the applicant on account of the construction of the vessel, including designing, equipping, and outfitting costs, have been paid.

(b) Any interim subsidy payments due pursuant to the subsidy contract shall be paid only after the Secretary has determined that such amount is properly due. If the amount of subsidy does not exceed 30 percent of the subsidized construction cost, none of the subsidy shall be paid until (1) the Maritime Administrator has certified that the vessel has been completed in accordance with the approved plans and specifications, and (2) all amounts due by the applicant on account of the construction of the vessel including designing, equipment, and outfitting costs, have been paid.

(c) Subsidy payments may be made to the applicant or jointly to the applicant and construction contractor or others, as may be appropriate, pursuant to the terms of the construction contract or otherwise.

(d) If the Maritime Administrator agrees, by his clearance of a payment schedule set forth in a pro forma construction contract to accompany a request for bids, that it is in the public interest to allow the percentage of the subsidized construction cost withheld to be less than 30 percent of the subsidized construction cost, then the subsidy contract executed in connection with such construction contract shall reflect payment in accordance with such payment schedule.

§ 256.11 Furnishing of information.

During the term of the contract, an affidavit will be submitted to the Secretary by the owner or his authorized agent, of each vessel constructed with the aid of a subsidy paid under the Act, within 90 days of the end of each calendar year, or at such other times as the Secretary may require, providing information on the citizenship and domicile of all vessel employees, the catch of the vessel by species, ports in which the catch was landed and assurance that the vessel has been continuously documented as a vessel of the United States during the preceding calendar year or period since the last previous affidavit was filed. It should also contain the basis for such information and when necessary include supporting documents. In addition, within 90 days of the close of each fiscal year, an operating statement shall be furnished to the Bureau.

[34 FR 19199, Dec. 4, 1969]

PART 257—NOTICE AND HEARING ON SUBSIDIES

Sec.

257.1 Basis and purpose.
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257.13 Evidence.
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257.15 Decisions.

AUTHORITY: Sec. 10, 74 Stat. 214, as amended; 46 U.S.C. 1410 (1964).

SOURCE: 31 FR 16050, Dec. 15, 1966, unless otherwise noted.

§ 257.1 Basis and purpose.

(a) The Act of June 12, 1960 (Pub. L. 86-516), as amended by the U.S. Fishing Fleet Improvement Act (Pub. L. 88-498) authorizes the Secretary of the Interior to pay a subsidy for the construction of fishing vessels in shipyards of the United States and requires that this be done only after Notice and Hearing.

(b) The purpose of this part is to establish rules of practice and procedure for the notice and hearing.

§ 257.2 Definitions.

Definitions shall be the same as in Part 256 of this subchapter.

§ 257.3 Scope of rules.

The regulations in this part govern the procedure in hearings subject to Part 256 of this subchapter. These hearings are subject to the Administrative Procedure Act (5 U.S.C. 1003, et seq.) and Practice Before The Department of the Interior (43 CFR Part 1). The regulations shall be construed to secure the just, speedy, and inexpensive determination of every proceeding with full protection for the rights of all parties therein.

§ 257.4 Mailing address.

Documents required to be filed in, and correspondence relating to, proceedings governed by the regulations in this part shall be addressed to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, D.C. 20240.

§ 257.5 Authentication.

All rules, orders, determinations, and decisions of the Secretary shall be signed by the Secretary.

§ 257.6 Inspection of records.

The files and records of these hearings, except those held by the Secretary for good cause to be confidential, shall be open to inspection and copying as follows:

(a) All pleadings, motions, depositions, correspondence, exhibits, transcripts of testimony, exceptions, briefs, and decisions in any formal proceeding under this part may be inspected and copied in the office of the Chief, Branch of Loans and Grants, Bureau of Commercial Fisheries, Department of the Interior, Washington, D.C. 20240.

(b) Orders, rules, rulings, opinions, determinations, and decisions may be inspected in the office of the Chief, Branch of Loans and Grants, except those held by the Secretary for good cause to be confidential and not cited as precedents.

§ 257.7 Appearance and practice.

(a) A party may appear in person or by an officer, partner or regular employee of the party; by or with counsel or as otherwise permitted by 43 CFR Part 1 in any proceeding under the regulations in this part. A party may offer testimony, produce and examine witnesses, and be heard upon brief and at oral argument if oral argument is granted by the Presiding Officer. Attorneys at law who are admitted to practice before the Federal Courts or before the courts of any State or possession of the United States, may represent a party as counsel.

(b) Persons who appear at any hearing shall deliver a written notice of appearance to the official reporter, stating for whom the appearance is being made. The Presiding Officer may require a person making an appearance in a representative capacity to show his authority to act in such capacity. The written appearance shall be made a part of the record.

§ 257.8 Parties.

(a) The term "party" shall include any natural person, corporation, association, firm, partnership, trustee, receiver, cooperative, or government agency determined by the Presiding Officer as having an interest in the proceedings. A party making an application shall be designated as "applicant." A party whose petition for leave to intervene is granted shall be designated an "intervenor." Only a party as designated in this section may introduce evidence or examine witnesses at hearings.

(b) For an intervenor to prove an interest in the hearings he must show that there is a reason for belief that the operation of the vessel described in the application will cause economic injury or hardship to efficient vessel operators already operating in the fishery in which it is proposed that the vessel be operated.

§ 257.9 Form, execution and service of documents.

(a) All papers to be filed under the regulations in this part shall be clear and legible; and shall be dated, signed in ink, contain the docket description and title of the proceeding and the title, if any, and the address of the signatory. Five copies of all papers are required to be filed. Documents filed shall be executed by (1) the person or persons filing same, (2) by an authorized officer thereof if it be a corporation or, (3) by an attorney or other person having authority with respect thereto.

(b) All documents, when filed, shall show that service has been made upon all parties to the proceeding. Such service shall be made by delivering one copy to each party in person or by mailing by first class mail, properly addressed with postage prepaid. When a party has appeared by attorney or other representative, service on such attorney or other representative will be deemed service upon the party. The date of service of document shall be the day when the matter served is deposited in the U.S. mail, shown by the postmark thereon, or is delivered in person, as the case may be.

(c) The original of every document filed under this part and required to be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by: (1) Mailing postage prepaid, (2) delivering in person, a copy to each party.

Dated at ——— this ——— day of ———, 19—.

Signature ————.

§ 257.10 Notice, pleadings, and replies.

(a) After acceptance of an application eligible on its face for construction subsidy or for the transfer of a vessel to a different fishery, the Director, Bureau of Commercial Fisheries, shall publish a notice of hearing in the

FEDERAL REGISTER advising that a hearing will be held not less than 30 days after date of such publication and setting the time and place and providing details with respect to such hearing. Any person desiring to intervene and present evidence that the approval of the application will cause economic injury or hardship to efficient vessel operators must file, at least 10 days prior to the date set for the hearing (unless otherwise consented to by the Presiding Officer), a Petition of Intervention setting forth his interest. The hearing will be held in Washington, D.C., unless such a petition is received. If such a petition is received, the Presiding Officer may designate a different hearing site by telegraphic notice to the parties in the proceedings. If no petition to intervene is received, it will not be necessary for the applicant to appear at the hearing if he files all information in writing as required by the Presiding Officer.

(b) All petitions shall be in writing and shall state the petitioner's grounds of interest in the subject matter; the facts relied upon, the relief sought; and shall cite the authority upon which the petition rests. The petition shall be served upon all parties named therein or affected thereby. Answers to petitions must be filed within 5 days of the hearing date, unless otherwise consented to by the Presiding Officer.

(c) Amendments or supplements to pleadings may be allowed or refused in the discretion of the Presiding Officer. The Presiding Officer may direct a party to state its case more fully and in more detail by way of amendment. If a response to an amended pleading is necessary, it may be filed and served within the time set by the Presiding Officer. Amendments or supplements allowed prior to hearing will be served in the same manner as the original pleadings.

(d) All motions and requests for rulings shall state the relief sought, the authority relied upon and the facts alleged. If made before or after the hearing, such motions shall be in writing. If made at the hearing, motions may be stated orally: *Provided, however,* That the Presiding Officer may require such motion to be reduced to writing and filed and served in the same manner as a formal motion. Oral argument upon a written motion, in which an answer has been filed, may be granted within the discretion of the Presiding Officer. Answers to a formal motion or pleading shall be filed and served in the same manner as the motion or pleading.

§ 257.11 Duties of Presiding Officer.

The Presiding Officer shall have the authority and duty to:

(a) Take or cause depositions to be taken.

(b) Rule upon proposed amendments or supplements to motions and pleadings.

(c) Regulate the course of the hearings.

(d) Prescribe the order in which evidence shall be presented.

(e) Dispose of procedural requests or similar matters.

(f) Hear and initially rule upon all motions and petitions before him.

(g) Administer oaths and affirmations.

(h) Examine witnesses.

(i) Rule upon offers of proof and receive competent, relevant, material, reliable, and probative evidence.

(j) Exclude irrelevant, immaterial, incompetent, unreliable, repetitious or cumulative evidence.

(k) Exclude cross-examination which is primarily intended to elicit self-serving declarations in favor of the witness.

(l) Limit cross-examination to interrogatories which are required for a full and true disclosure of the facts in issue.

(m) Act upon petitions to intervene.

(n) Act upon submission of facts or arguments.

(o) Hear arguments at the close of testimony.

(p) Fix the time for filing briefs, motions and other documents to be filed in connection with hearings.

(q) Issue the initial decisions and dispose of any other pertinent matter that normally and properly arises in the course of proceedings.

§ 257.12 Hearing procedure.

(a) Unless authorized by the Presiding Officer, witnesses will not be permitted to read prepared testimony into the record. The evidentiary record shall be limited to factual and expert opinion testimony. Arguments will not be received in evidence but should be presented in opening and/or closing statements or in briefs to the Presiding Officer. All exhibits and responses to requests for evidence shall be numbered consecutively by the party submitting same and shall be filed with the Presiding Officer if filed during the hearing. If filed at some other time they should be filed in accordance with § 257.4 with one copy also being sent to each party to the hearing.

(b) Normally, the order of presentation at the hearing will be alphabetical in each of the following categories:

(1) Applicant.
(2) Intervenors.

Rebuttal should be presented without any adjournment in the proceedings.

(c) Cross-examination shall be limited, subject to § 257.13(b), to the scope of the direct examination and to witnesses whose testimony is adverse to the party desiring to cross-examine. Only cross-examination which is necessary to test the truth and completeness of the direct testimony and exhibits will be permitted.

(d) A request for oral argument at the close of testimony will be granted or denied by the Presiding Officer in his discretion.

(e) Rulings of the Presiding Officer may not be appealed prior to, or during, the course of the hearings, except in extraordinary circumstances where prompt decision by the Secretary is necessary to prevent unusual delay or expense, in which instance the matter shall be referred forthwith to the Secretary by the Presiding Officer. Any appeal shall be filed within 10 days from the date of the close of the hearing.

§ 257.13 Evidence.

(a) In any proceedings under this part, all evidence which is relevant, material, reliable, and probative, and not unduly repetitious or cumulative, shall be admissible. Irrelevant and immaterial or unduly repetitious evidence shall be excluded.

(b) Each party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence; and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(c) At any time during the hearing the Presiding Officer may call for the production of further relevant and material evidence, reports, studies and analyses upon any issue, and require such evidence to be presented by the party or parties concerned, either at the hearing or adjournment thereof. Such material shall be received subject to appropriate motions, cross-examination and/or rebuttal. If a witness refuses to testify or produce the evidence as requested, the Presiding Officer shall forthwith report such refusal to the Secretary.

§ 257.14 The record.

(a) The Director, Bureau of Commercial Fisheries, will designate an official reporter for all hearings. The official transcript of testimony taken, together with any exhibits and briefs filed therewith, shall be filed with the Director, Bureau of Commercial Fisheries. Transcripts of testimony will be available in any proceeding under the regulations of this part, and will be supplied by the official reporter to the parties and to the public, except when required for good cause to be held confidential, at rates fixed by the contract between the United States of America and the reporter. If the reporter is an employee of the Department of the Interior, the rate will be fixed by the Director, Bureau of Commercial Fisheries.

(b) The transcript of testimony and exhibits, together with all papers and requests, including rulings and the initial decision filed in the proceeding, shall constitute the exclusive record for decision. The initial decision will be predicated on this same record, as will the final decision.

§ 257.15 Decisions.

(a) The Presiding Officer is delegated the authority to render initial decisions in all proceedings before him. The same officer who presides at the reception of evidence shall render the initial decision except when such officer becomes unavailable to the Department of the Interior. In such case, another Presiding Officer will be designated by the Secretary to render the initial decision. Briefs, or other documents, to be submitted after the hearing must be received not later than ten (10) days after the hearing unless otherwise extended by the Presiding Officer upon motion by a party. The initial decision shall be made within twenty (20) days after the hearing or the receipt of all briefs, whichever is later. If no appeals from the initial decision are received within ten (10) days of the date of the initial decision, it will become the final decision on the 20th day following the date of the initial decision. If an appeal is received, the appeal will be transmitted to the Secretary who will render the final decision after considering the record and the appeal.

(b) All initial and final decisions shall include a statement of findings and conclusions, as well as the reasons or basis therefor, upon the material issues presented. A copy of each decision shall be served on the parties to the proceeding, and furnished to interested persons upon request.

(c) Official notice may be taken of such matters as might be judicially noticed by the courts; or of technical or scientific facts within the general or specialized knowledge of the Department of the Interior as an expert body; or of a document required to be filed with or published by a duly constituted Government body: *Provided*, That where a decision or part thereof rests on the official notice of a material fact not appearing in the evidence of the record, the fact of official notice shall be so stated in the decision and any party, on timely request, shall be afforded an opportunity to show the contrary.

PART 258—FISHERMEN'S PROTECTIVE ACT PROCEDURES

Subpart A—Seizures of U.S. Commercial Fishing Vessels

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Subpart A—Seizures of U.S. Commercial Fishing Vessels

AUTHORITY: Sec. 7, 82 Stat. 729; 22 U.S.C. 1977; Reorg. Plan No. 4 of 1970, unless otherwise noted.

SOURCE: 36 FR 11922, June 23, 1971, unless otherwise noted.

§ 258.1 Definition of terms.

For the purpose of this part, the following terms shall be construed, respectively, to mean and to include:

(a) *Secretary.* The Secretary of Commerce or his authorized representative.

(b) *Owner.* The registered owner or owners of a commercial fishing vessel, or a bareboat charterer of a commercial fishing vessel.

(c) *Act.* The Fishermen's Protective Act of 1967 (22 U.S.C. 1971-1977, as amended).

(d) *Fishermen's Guarantee Fund.* The account established in the Treasury of the United States under the provision of section 7(c) of the Act.

(e) *Commercial fishing vessel.* A vessel licensed or enrolled and licensed as a fishing vessel of the United States (or registered under United States law, and entitled to be licensed or enrolled and licensed for the fisheries of the United States) and catching, transporting, or processing, fish and/or shellfish.

(f) *Seized.* Placed under arrest and detained by a foreign country for alleged illegal fishing.

[36 FR 11922, June 23, 1971, as amended at 38 FR 6283, Mar. 8, 1973; 46 FR 70469, Oct. 24, 1980]

§ 258.2 Purposes of Fishermen's Protective Fund.

The broad objective of the Fishermen's Protective Fund is to provide for reimbursement of losses and costs (other than fines, license fees, registration fees, and other direct costs which are reimbursable through the Secretary of State) incurred as a result of the seizure of a U.S. commercial fishing vessel by a foreign country on the basis of rights or claims in territorial waters or on the high seas which are not recognized by the United States.

§ 258.3 Eligibility.

Any owner of a commercial fishing vessel documented or certified in the United States is eligible to apply for an agreement with the Secretary providing for a guarantee in accordance with section 7(a) of the Act.

§ 258.4 Applications.

Any owner desiring to enter into an agreement with the Secretary under the authority of section 7(a) of the Act shall make application to the National Marine Fisheries Service, Attention: Chief, Division of Financial Assistance (F224), 1801 North Moore Street, Arlington, VA 22209, upon application form furnished by that Service. The application shall be accompanied by a fee in the amount prescribed in the paragraph immediately below.

§ 258.5 Fees.

(a) Fees must pay administrative costs and a minimum of 25 percent of estimated claim payments. Fees are based on prior and anticipated experience. Fees may be adjusted by amending this part. Fund experience requires the following higher fees:

(b) Fees paid by an applicant for Guarantee Agreements for the agreement year October 1, 1980, through September 30, 1981, shall be $4.00 per gross ton as listed on the vessel's document. Fractions of a ton shall not be included. Although fees are due on October 1, 1980, all parties holding Guarantee Agreements (by Amendments or otherwise) for the period terminating September 30, 1980, shall have until December 1, 1980 (midnight local time), to pay the fees established herein. Failure to do so by December 1, 1980, will result in non-extension of the previous year's Guarantee Agreement.

(c) No fees will be returned after a guarantee agreement is executed by the Secretary.

(d) A guarantee agreement may, with the Secretary's consent, be assigned to a new owner of a vessel if the vessel is transferred during the period in which the agreement is in force.

(22 U.S.C. 1971-1980)

[45 FR 57723, Aug. 29, 1980, as amended at 45 FR 70470, Oct. 24, 1980]

§ 258.6 Insurance required.

In order to qualify for an agreement executed under this part, the vessel must be insured during the period of the agreement with hull and machinery insurance and protection and indemnity insurance in an amount and form satisfactory to the Secretary.

§ 258.7 Approval of application.

The approval of an application shall be evidenced by the execution of the agreement by the Secretary and the agreement shall be in effect from the time of its effective date.

§ 258.8 Payment of claims.

(a) In case of a cost or loss resulting in a claim under an agreement, the claim shall be filed in duplicate with the Director, National Marine Fisheries Service, Attention: Chief, Division of Financial Assistance (F224), 1801 North Moore Street, Arlington, VA 22209. The Director will obtain verification of certain essential facts regarding the seizure from the Department of State. Payments shall be made as promptly as practicable but may at times be delayed pending appropriation of necessary funds.

(b) The burden of proving all damages shall be upon the guaranteed party.

(c) No payment shall be made on a claim caused by negligence of the Owner, captain or crew.

(d) No payment shall be made on a claim unless all fees due have been paid in full.

(e) Each claim filed shall contain an authorization to all International, Federal, State, or local government agencies to furnish the National Marine Fisheries Service with any data or information relating to the operation of the vessel involved in the claim which the Secretary deems necessary for adjudication of the claim.

(f) No claim shall be paid unless the vessel involved and covered by a guarantee agreement is properly documented as a vessel of the United States at the time of the seizure.

(g) No claim of any crew member who is not a citizen or an alien legally domiciled in the United States will be considered.

(h) In case of the loss or confiscation of a vessel or gear resulting in a claim, the value of the vessel or gear for the purpose of settling the claim shall be the market value as determined by the Secretary.

(i) The value used in determining claims involving the catch of the vessel will be that paid in the port and on the date of the first arrival of the vessel in the United States as determined by the Secretary. If the vessel does not return to a port of the United States, the value used will be determined by the Secretary after consideration of the circumstances involved.

(j) Original documents or certified copies of receipts and other documents required as verification of losses must be provided.

(k) All assureds shall pursue any claim under commercial insurance covering identical loss or losses as the Secretary may determine to be necessary prior to application for payment under this part.

§ 258.9 Records.

The Secretary shall have the right to inspect such books and records of the owner as the Secretary may deem necessary in processing a claim under this part.

Subpart B—Compensation for Damage Caused by Foreign Vessels in the Fishermen's Protective Zone

AUTHORITY: Sec. 10, 91 Stat 1413 (22 U.S.C. 1980).

SOURCE: 43 FR 45870, Oct. 4, 1978, unless otherwise noted.

§ 258.20 Purpose.

This subpart provides rules and procedures for the granting, repayment, and cancellation of loans to owners and operators of U.S. commercial fishing vessels for the loss, damage, or destruction of their fishing vessles or gear caused by a vessel (or its crew or fishing gear) of a foreign nation operating in the Fishermen's Protective Zone.

§ 258.21 Definitions.

Unless the context otherwise requires, in this subpart:

(a) "Alternative claim" means any claim not made under this subpart which seeks compensation for the same loss, damage, or destruction of a fishing vessel or fishing gear as a claim under this subpart.

(b) "At fault" means negligence or willfulness, through action or inaction, causing the loss, damage, or destruction involved.

(c) "Fishermen's Protective Zone" means; (1) the area adjacent to the

United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured, (2) all areas in which U.S. Continental Shelf fishery resources are found, and (3) the area representing the migratory range of any species of anadromous fish of the United States; except that such area shall not extent within any foreign nation's territorial sea or fishery conservation zone (or the equivalent) to the extent that such sea or zone is recognized by the United States.

(d) "Foreign vessel" means a vessel of a foreign nation, its crew, or fishing gear.

(e) "Secretary" means the Secretary of Commerce or his or her designated representative.

(f) "Loan" means a loan under section 10 of the Fishermen's Protective Act of 1967, as amended (22 U.S.C. 1980).

§ 258.22 Eligibility.

(a) *Applicants.* An applicant must be the owner or operator of a vessel which is used primarily for the commercial catching, processing, or transporting of fish or shellfish and which is either documented under the laws of the United States in the fisheries trade or certified or registered under the laws of any political subdivision of the United States.

(b) *Loss, damage, or destruction.* The applicant's vessel or its fishing gear must have been lost, damaged, or destroyed after July 1, 1976, as a result of the operation of a foreign vessel (or its crew or gear) in the Fishermen's Protective Zone. The total amount of such loss, damage, or destruction must exceed $2,000, as determined by the Secretary under § 258.26.

(c) *Alternative claims.* Any applicant who has made an alternate claim shall not be eligible for a loan if the Secretary determines that the alternative claim is substantially resolved at the time of the application or at the time of the loan. An alternative claim shall be regarded as substantially resolved if, at the time of the application or loan, the alternative claim proceeding has resulted in compensation for the claimant (whether or not such compensation is less than the amount applied for under a loan application) or in a final denial of the claims.

(d) *Insurance.* An applicant's claim for such loss, damage, or destruction cannot be of such a nature as would ordinarily be covered under the collision clause, or other clauses, of a full hull and machinery policy of commercial insurance or under a full protection and indemnity of policy of commercial insurance.

§ 258.23 Applications.

(a) *Form.* Applications for loan shall be submitted to the Financial Services Division, National Marine Fisheries Service, Washington, D.C. 20235, by the owner or operator of the vessel concerned. Each application must be in a form suitable to establish that the situation involved meets the eligibility criteria in § 258.22 and must include as attachments the affidavits and estimates referred to in this section.

(b) *Affidavit of vessel master.* Applications shall include an affidavit by the master of the applicant's vessel (or by different masters if more than one was involved during any material period) fully describing the circumstances before, during, and after the incident resulting in loss, damage, or destruction which states, among other things:

(1) Time, date, and locational coordinates (longitude and latitude) of the incident;

(2) Actions of the foreign vessel alleged to have caused the loss, damage, or destruction, before, during, and after the incident (if such actions were observed);

(3) Actions of the applicant's vessel or crew before, during, and after the incident, including a full description of circumstances involving deployment and retrieval of fishing gear (for example: time, date, locational coordinates, and circumstances of the gear's retrieval, and all attempts at retrieval);

(4) Description of the size, type, flag, identifying number, color of house or

hull, or other identifying characteristics, including a photograph, if available, of the foreign vessel alleged to have caused the loss, damage, or destruction (if such vessel was observed);

(5) A full statement of the reasons for belief that the loss, damage, or destruction was caused by a foreign vessel rather than by: wind, weather, sea, or other natural conditions; defective gear; defective deployment (for example, means of fixing gear); defective retrieval (for example, means to have been used for relocating gear); or a domestic vessel;

(6) Names and statements of any material witnesses;

(7) Nature and extent of loss, damage, or destruction, including, if possible, photographs of the damage, even if taken after return to port; and

(8) Description of the property which was lost, damaged, or destroyed, including type, size, material of construction, number of units, and remaining economically useful life at the time of the incident.

(c) *Affidavit of owner or operator.* Applications shall include an affidavit from the owner or operator of the vessel or gear for which a claim is being made stating the date, cost, and place of acquisition of the property which was lost, damaged, or destroyed, as well as its age and remaining economically useful life when acquired, and shall attach, if available, a copy of the original invoice or bill of sale of the property concerned.

(d) *Estimates.* Applications shall include three estimates from commercial sources, acceptable to the Secretary, setting forth the replacement cost of the property concerned as well as its repair cost, if repairable.

(e) *Evidence of foreign vessels in the area.* Applications shall include documentation from the U.S. Coast Guard or National Marine Fisheries Service indicating all foreign vessels known to have been in the vicinity of the incident at any time after deployment of the gear lost, damaged, or destroyed and before its retrieval or attempted retrieval.

(f) *Other evidence.* The Secretary may, in his or her discretion, require further affidavits, other evidence, or supplementary information.

(g) *Application fee.* Applications shall be accompanied by a fee in the form of a check or money order made payable to "National Marine Fisheries Service" in the amount of $50. This fee shall not be refunded.

(h) *Time requirement.* After October 1, 1978, applications must be postmarked not later than 60 calendar days after the date the claimed loss, damage, or destruction occurred.

(i) *Abandoned applications.* As soon as practicable after receipt of an incomplete or improperly executed application, the applicant shall be notified by the National Marine Fisheries Service of any deficiency in the application. If the applicant fails to supply the deficient information or otherwise fails to correct the deficiency within 60 calendar days following the date of notification, the application shall be considered abandoned.

§ 258.24 Approval of loan applications.

A loan may be made to the applicant, if the Secretary finds that:

(a) The eligibility requirements of §258.22 are met;

(b) The application satisfies the requirements of § 258.23; and

(c) The Secretary reasonably determines that the claimed loss, damage, or destruction was caused, or could reasonably have been caused, by the operation of a foreign vessel in the Fishermen's Protective Zone.

§ 258.25 Terms and conditions of loans.

(a) *Loan amount.* The amount of a loan will equal the extent of the loss, damage, or destruction involved as determined under § 258.26.

(b) *Time period.* The terms of a loan shall not exceed the economically useful life of the vessel or gear acquired or repaired with the proceeds of the loan, and may, at the discretion of the Secretary, be for a shorter period of time.

(c) *Collateral.* Collateral for the loan shall be required at the discretion of the Secretary and may include a secured interest in the vessel or gear acquired or repaired with the proceeds of the loan. All loans will be evidenced by a promissory note payable to the

Secretary from the owner of such vessel or gear.

(d) *Interest rate.* The interest rate for loans will be 3½ percentum per annum.

(e) *Loan fees.* A fee for granting the loan shall be charged and deducted from the proceeds of the loan. The amount of this fee shall be equal to the difference during the loan's first year between the loan's 3½ percent interest rate and the approximate cost of Government borrowings of about a 7-year maturity.

(f) *Payment.* The Secretary may require that the proceeds of a loan be escrowed and subsequently paid directly to the supplier of goods or services in connection with the replacement or repair of vessels or gear after the Secretary's receipt of all properly executed loan documents and upon presentation of proper invoices and authorizations to pay. Payment may be made to loan recipients if circumstances warrant.

(g) *Assignment.* Loan recipients shall assign, or agree to assign, to the Secretary any rights they might have to recover moneys or damages from any person for the loss, damage, or destruction for which a loan is made.

(h) *Repayment or cancellation.* Loans shall be repaid or canceled in accordance with § 258.28.

(i) *Collection efforts.* Loan recipients shall agree to assist the Secretary's efforts under § 258.29.

(j) *Other terms and conditions.* Loans shall be subject to such other terms and conditions as the Secretary deems necessary and appropriate.

§ 258.26 Determination of amount of loss, damage, or destruction.

(a) *Value of property.* In the case of property which has been lost or destroyed, the Secretary shall determine the value of the loss or destruction by using the replacement cost of such property as if it had been the original acquisition cost of such property and by depreciating such replacement cost on a straight line basis over the economically useful life of such property. In the case of property which is capable of being repaired, the Secretary shall determine the value of damage in light of the estimates of repair submitted under § 258.23(d), but in no event shall damage determinations exceed the depreciated, present, replacement cost of the property concerned. Example: 100 lobster pots with a present replacement cost of $100 each were totally lost. Each pot had an economically useful life of 36 months and was 18 months old, leaving a remaining economically useful life of 18 months. The value of loss would be calculated as follows:

(1) 100 pots × $100 = $10,000 present replacement cost.

(2) $10,000 ÷ 36 months = $277.78 depreciation per month.

(3) $277.78 × 18 months remaining useful life = $5,000 for depreciated, present, replacement cost.

If the casualty were confined to property which could be repaired, the value of the casualty would be the actual cost of repair up to, but not exceeding, the depreciated, present, replacement cost of $5,000 as calculated above. If partial loss, damage, or destruction occurs, and the applicant is unable to determine which receipts of purchase pertain to the lost, damaged, or destroyed gear, the applicant must submit proof of purchase for all gear involved in the incident in order that an averaging method may be used to determine the depreciation. If the gear involved was purchased on several dates, the number of months between the first and last purchases will be divided in half and depreciation will start from the midpoint. The following is an example: Purchase dates are January, March, and June. Date of loss is December. Computation will be made as follows:

(1) January to June = 6 months.

(2) 6 months ÷ 2 = 3 months.

(3) Three months from the first date of purchase (January) is April.

(4) Depreciation will be computed from April to the date of the incident in December. The allowable depreciation in this example is 9 months.

§ 258.27 Determination of fault.

(a) *Investigation.* Following the granting of each loan, the Secretary shall investigate the circumstances of the incident resulting in the loss, damage, or destruction concerned in an attempt to ascertain the facts required for a determination of whether or not the loan recipient was at fault for the loss, damage, or destruction.

(b) *Factors to be considered.* In making a determination of fault, the Secretary shall take into account: (1) Evidence submitted with the application in accordance with § 258.23; (2) whether the loan recipitent, prior to the incident involved, reported the location of the fishing gear to the U.S. Coast Guard for broadcasting to foreign vessels in accordance with 50 CFR 611.11 (failure to do so will create a presumption that the loan recipient was at fault); and (3) such other matters as the Secretary may deem appropriate.

(c) *Notification of preliminary determination.* Upon completing the investigation, the Secretary shall make a preliminary determination of whether it is possible to ascertain who was at fault for the incident and, if so, whether the loan recipient was at fault and notify the loan recipient of these determinations.

(d) *Review of record.* The loan recipient may examine the complete record upon which the determinations of the Secretary are made under this section.

(e) *Comments.* The loan recipient shall have 30 calendar days after the receipt of notification under paragraph (c) of this section to submit any comments, data, or other information concerning the preliminary determination of the Secretary. All timely comments, data, or other information shall be considered by the Secretary prior to making a final determination.

(f) *Final determination.* As soon as practicable after the termination of the period described in paragraph (e) of this section, the Secretary shall make a final determination of fault and shall notify the loan recipient of the determination.

§ 258.28 Loan repayment or cancellation.

Based upon the final determinations made under § 258.27 the Secretary shall:

(a) If it is determined that the loan recipient was not at fault, cancel repayment of the loan and refund any principal and interest payments made thereon;

(b) If it is determined that the loan recipient was at fault, require that the loan be repaid prior to its original term within a reasonable time as determined by the Secretary, taking into account its original duration and the percentage of fault attributable to the loan recipient; or

(c) If it cannot be determined whether or not the loan recipient was at fault, continue the loan according to its original terms.

§ 258.29 Government collection. [Reserved]

Subpart C—Compensation for Fishing Vessel or Fishing Gear Damage in a U.S. Fishery Attributable to Other Vessels or Acts of God

AUTHORITY: Pub. L. 95-376. 92 Stat. 715 (22 U.S.C. 1980).

SOURCE: 44 FR 61547, Oct. 25, 1979; 45 FR 60913, Sept. 15, 1980, unless otherwise noted.

§ 258.30 Purpose and scope.

(a) This subpart contains the regulations for compensating the owners or operators of United States fishing vessels or fishing gear for casualties occurring after January 1, 1979. Eligible vessel casualties are those which are attributable to any foreign vessel (or its crew or fishing gear). Eligible fishing gear casualties are those which are attributable to acts of God or any other vessel (or its crew or fishing gear), whether or not such vessel is a vessel of the United States.

(b) For regulations governing casualties occurring before January 1, 1979 see Subpart B.

§ 258.31 Definitions.

Unless the context otherwise requires, in this subpart:

(a) "Act of God" means any act, event, or circumstance:

(1) Which is occasioned exclusively by natural causes; and

(2) Whose effect could not reasonably have been prevented, avoided, or ameliorated by human care, skill, or foresight (either before or after the act, event, or circumstance) of a type, degree, and timeliness which would normally be expected from an ordinarily prudent person in the same situation and under the prevailing circumstances.

(b) "Assistant Administrator" means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

(c) "Casualty(ies)" means loss, damage, or destruction of fishing vessels which is attributable to foreign vessels (or their crew or fishing gear) or loss, damage, or destruction of fishing gear which is attributable to any other vessels (or their crew or fishing gear) or acts of God.

(d) "Chief, FSD" means Chief, Financial Services Division, National Marine Fisheries Service.

(e) "Commercial shipping lane" means any area designated for commercial shipping traffic by vessel tracklines shown on pilot charts published by the U.S. Defense Mapping Agency Hydrographic Center or vessel traffic separation lanes as depicted on U.S. National Ocean Survey nautical charts.

(f) "Fishery" means:

(1) One or more stocks of fish which can be treated as a unit for purposes of conservation, management, and utilization and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(2) Any fishing for such stocks.

(g) "Fishery conservation zone" means the fishery conservation zone established by section 101 of the Fishery Conservation and Management Act of 1976, as amended.

(h) "Fishing" means:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (h) (1) through (3) of this section. Fishing does not include any scientific research activity conducted by a scientific research vessel.

(i) "Fishing gear" means any equipment or appurtenance which is:

(1) Used for, or of a type which is normally used for, fishing by a fishing vessel, whether or not attached to the vessel; and

(2) Not considered a part of the fishing vessel for the purpose of recovery under a commercial policy of full hull and machinery and protection and indemnity insurance.

(j) "Fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(1) Fishing; or

(2) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(k) "Foreign vessel" means a vessel other than a vessel of the United States, regardless of such vessel's trade or use.

(l) "United States fishery" means any fishery subject to the exclusive fishery management authority of the United States under the Fishery Conservation and Management Act of 1976, as amended.

(m) "United States fishing vessel" means any fishing vessel which is a vessel of the United States.

(n) "Unobserved fishing gear casualty" means a fishing gear casualty which was not observed by the applicant or any agent or employee of the applicant.

(o) "Vessel of the United States" means any vessel documented under the laws of the United States or registered under the laws of any State, regardless of such vessel's trade or use.

§ 258.32 Eligibility.

(a) *Applicants.* Only the owner or operator of a United States fishing vessel or fishing gear is eligibile for compensation under this subpart.

(b) *Dates.* Casualties occurring after January 1, 1979, are eligible for compensation under this subpart. See Subpart B of this part for regulations governing casualties occurring before January 1, 1979.

(c) *Casualty to fishing vessels.* A casualty to a United States fishing vessel is eligible for compensation under this subpart if it occurred in a United States fishery and is attributable to any foreign vessel.

(d) *Casualty to fishing gear.* A casualty to fishing gear is eligible for compensation under this subpart if it occurred in a United States fishery and is attributable to an act of God or any other vessel (or its crew or fishing gear, even if such gear was not attached to the vessel), whether or not such vessel is a foreign vessel.

(e) *Reporting requirement.* A casualty to fixed fishing gear attributable to any other vessel is not eligible for compensation unless the claimant has met all mandatory reporting requirements regarding gear deployment set forth in any applicable Fishery Management Plan or other Federal regulation. Fishermen are encouraged to participate in voluntary gear reporting programs. A record of gear deployment broadcast to other vessels may be considered evidence of prudent care on the part of a fisherman to notify other vessels in a particular area of the presence of that fisherman's gear.

(f) *Insurance.* Compensation under this Subpart will not be made for any part of a casualty which would have been recoverable under a commercial policy of full hull and machinery and protection and indemnity insurance, regardless of whether or not such insurance was in effect. The Fund will, however, compensate for United States fishing vessel casualties caused by foreign vessels (or their crew or fishing gear) to the extent of a reasonable deductible under full hull and machinery and protection and indemnity insurances (even if such insurances were not in effect).

(g) *Commercial Shipping Lanes.* No casualty incurred in a commercial shipping lane caused by a vessel transiting such lane is eligible for compensation under this subpart. In the case of fishing gear casualties, the presumption of § 258.34(b)(1)(i) of this subpart shall not apply.

[44 FR 61547, Oct. 25, 1979, as amended at 45 FR 17018, Mar. 17, 1980; 45 FR 60913, Sept. 15, 1980]

§ 258.33 Applications.

(a) *Who may apply.* Applications under this subpart shall be submitted by the owner or operator whose United States fishing vessel or fishing gear suffered the casualty for which compensation is sought.

(b) *Where to apply.* Applications shall be submitted to the Financial Services Division, National Marine Fisheries Service, Washington, D.C. 20235.

(c) *Time Requirement.* After June 30, 1980, applications must be submitted to the Financial Services Division within 90 calendar days of the date the owner or operator became aware of the casualty. Applications sent by mail must be postmarked during that 90-day period. Applications made later than 90 days are not eligible.

(d) *Contents.* (1) Applications may be submitted on forms provided by the Financial Services Division when such forms are available. Until such forms are available, applications shall include the information required by paragraphs (d) through (k) of this section.

(2) Each application shall be signed by the applicant and shall state the applicant is the owner or operator of the United States fishing vessel or fishing gear involved in the casualty.

(3) Each application shall include as attachments the affidavits and estimates required by this section. For the purposes of this section, an affidavit is a written statement sworn to or affirmed before a notary public or other official empowered to administer oaths.

(e) *Affidavit of vessel master.* Each application shall include an affidavit of the master of the United States fishing vessel which suffered, or whose fishing gear suffered, the casualty for which compensation is sought. If more than one master was involved at any material time before, during, or after the casualty, the application shall include an affidavit from each master. The affidavit shall set forth a full statement of all facts and circumstances before, during, and after the incident resulting in the casualty for which compensation is sought, including:

(1) A full description of the nature of the fishing operations resulting in the casualty. The description of casualties to fixed fishing gear shall ordinarily include a diagram and accompanying explanation showing the various components of the gear involved in the casualty and how they were arranged while operating.

Example. The description for a casualty to fixed fishing gear should describe:

(i) How the gear was fixed, anchored, or otherwise prevented from drifting and with what size, weight, type, construction material, and number of anchors or other means of fixation;

(ii) How many pots, traps, or other units of gear of what size, weight, type, and construction material were fixed to the gear; how they were fixed; and at what intervals;

(iii) How the gear was buoyed with what size, shape, type, and construction material buoys, and how many buoys were used at what intervals on the gear set;

(iv) What size, weight, type, grade, and construction material lines, ropes, or cables were used;

(v) What provisions were made to ensure the gear could be seen by other vessels;

(vi) What provisions were made to ensure the gear could be located and retrieved;

(vii) At what depth the gear operated, its length, and what area it covered;

(viii) What weather or sea conditions the gear was designed to withstand; and

(ix) Any other relevant details of the casualty.

(2) A full description of the nature and extent of loss, damage, or destruction involved in the casualty, including photographs of the damage where possible.

(3) The time, date, and location (in latitude and longitude coordinates or Loran C readings) of the incident resulting in the casualty.

(4) If the casualty were not observed at the time it happened, include:

(i) The time, date, and location when the gear was first deployed;

(ii) The time, date, and location when the gear was last observed to be in a sound state (if different from the time and date of its deployment);

(iii) The time, date, and location when knowledge of the casualty first became known; and

(iv) A full statement (to the best of applicant's knowledge) of the weather and sea conditions (or any other conditions which could be construed as an act of God) which existed during the period after deployment and before first knowledge of the casualty.

(5) If the casualty were observed at the time it happened, a full description of the act of God or vessel which caused the casualty (for instance, unusual weather conditions if the cause were an act of God; or the other vessel's size, type, flag, name, number, color of house or hull, and other identifying characteristics if the cause were the action of another vessel, and a full description of such vessel's, and/or its crew's, actions before, during, and after the casualty).

(6) A full description of the actions of the applicant's United States fishing vessel and its crew before, during, and after the casualty, including all circumstances involving deployment of any fishing gear involved in the casualty and locating and retrieving it or all attempts at locating and retrieving it.

(7) A full statement of the reasons for belief that the casualty was caused by another vessel or by an act of God rather than by natural conditions constituting less than an act of God ("act of God" as defined in § 258.31) or by other ineligible causes (for example, defective deployment, defective retrieval, or other circumstances which constitute normal operating contingencies).

(8) A full inventory of all property involved in the casualty, including: The number of all components lost, damaged, or destroyed; their size, type, grade and construction material; their age; their useful economic life; whether the damage was total or repairable (and, if a combination of both, what components were totally

damaged or lost and what components were retrieved in what condition, etc.).

(f) *Affidavit of the owner.* Each application shall also include an affidavit of the owner of the United States fishing vessel or fishing gear involved in the casualty. A single affidavit of the vessel master and owner may be submitted if the vessel master is also the owner of the property concerned. Each affidavit shall include:

(1) A complete inventory of all fishing gear owned by the applicant of a type similar to any fishing gear involved in the casualty for which a claim for compensation is being made. The inventory shall be current as of a date immediately preceding the casualty (the lost, damaged, or destroyed fishing gear must be included in the inventory). The age and remaining useful economic life of each unit of fishing gear in the inventory shall be specified.

(2) The date, place, and cost of acquisition of all fishing gear and components lost, damaged, or destroyed in the casualty. Purchase invoices or other acceptable proof of ownership for such gear shall be submitted.

(g) *Estimates.* Each application shall include two estimates, from commercial sources, acceptable to the Chief, FSD, of the property lost, damaged, or destroyed and its repair cost if it is repairable.

(h) *Witnesses.* Each application shall include:

(1) The name, address, and telephone number of each known witness to the casualty; and

(2) An affidavit from any material witness to the casualty setting forth any material information possessed by such witness.

(i) *Efforts to retrieve fishing gear.* A full description of the actions taken to retrieve the fishing gear involved in the casualty must accompany the claim. The applicant is responsible for reporting any fishing gear retrieved to the Chief, FSD, whether before or after a decision is made on a claim.

(j) *Other evidence.* The Chief, FSD, may require an applicant to submit affidavits, information, explanations, or estimates in addition to those specified in this section.

(k) *Filing fee.* Each application shall include a check or money order made payable to the National Marine Fisheries Service for the filing fee. The filing fee is one percent (1%) of the replacement and/or repair (whichever is applicable) cost of the property lost, damaged, or destroyed (but in no event shall the filing fee exceed $1,000). The replacement and/or repair cost used to calculate the filing fee is the lower of the two estimates required by § 258.33(g) to be included in the application. The filing fee is non-refundable.

(l) *Incomplete and abandoned applications.* As soon as practicable after receipt of an incomplete or improperly completed application, the Chief, FSD, shall notify the applicant. The 60-day processing time, within which an Initial Determination shall be made under § 258.36, does not begin to run until an application is determined by the Chief, FSD, to be both proper and complete in all respects. If the applicant without good cause fails to correct a deficiency within 60 calendar days following the date of notification of the deficiency, the application shall be considered abandoned.

(1) *Amendment of applications.* An application may be amended any time after submission, but prior to the Initial Determination specified in §258.36. The Chief, FSD, shall make an Initial Determination on the application, as amended, within 60 days from the receipt of the amendment.

[44 FR 61547, Oct. 25, 1979; 45 FR 60913, Sept. 15, 1980, as amended at 45 FR 72667, Nov. 3, 1980]

§ 258.34 Burden of proof and presumptions.

(a) *Burden of proof.* The applicant has the burden to prove the cause of the casualty by a preponderance of the evidence. An applicant seeking compensation for a casualty to fishing gear has the burden to prove that the gear was deployed, and attempts to retrieve it were, in conformance with customary usage and practice and otherwise constituted the actions of an ordinarily prudent person.

(b) *Presumptions.* (1) Unobserved fishing gear casualties.

(i) *Attributable to foreign vessels.* (A) Upon the filing of an application for compensation for an unobserved fishing gear casualty, the Chief, FSD, shall compile available data concerning foreign vessel activity in the vicinity of the casualty between the date when the deployed gear was last seen in a sound state and the date upon which knowledge of the casualty was first gained.

(B) There is a presumption that an unobserved fishing gear casualty was attributable to a foreign vessel if the Chief, FSD, determines that the data compiled under paragraph (A) show that foreign vessel was in close proximity to the fishing gear, or a sufficient number of foreign vessels were in the general vicinity of the fishing gear, between the date when the deployed gear was last seen in a sound state and the date of its retrieval or attempted retrieval to enable a determination that it is reasonable to believe that the casualty could have been attributable to foreign vessels.

(ii) *Attributable to acts of God.* (A) The following procedure will be used in determining whether or not there is a presumption that an observed fishing gear casualty was attributable to an act of God:

(*1*) The Office of Oceanic and Atmospheric Services of the National Oceanic and Atmospheric Administration will compute the historical mean of weather and sea conditions for the general location, and during the season, of the casualty.

(*2*) The same office will determine the actual weather and sea conditions at the general location, and at the time, of the casualty.

(*3*) The same office will compare the actual weather and sea conditions with the historical mean.

(*4*) If the actual weather and sea conditions were in excess of one standard deviation above the historical mean for the area on the date of the casualty, there is a presumption that the casualty was attributable to an act of God.

(*5*) The Office of Oceanic and Atmospheric Services will also make a determination about the availability of weather and sea conditions forecasts, which may be a relevant factor in the amount of compensation pursuant to the provisions of § 258.35(e) for otherwise qualified acts of God.

(c) *Non-qualifying casualties.* (1) Unobserved fishing gear casualties which do not qualify for the presumptions of § 258.34(b) shall be judged upon the evidence made available by the claimant. If the presumptions in § 258.34(b) are not met because of the inability of the Chief, FSD, to collect the necessary information, the Chief, FSD, shall make a determination based upon the evidence made available by the claimant.

(d) *Unobserved fishing gear casualty attributable to domestic vessels.* There is no presumption for unobserved fishing gear casualties attributable to vessels of the United States.

(e) *Observed casualties.* The presumptions for unobserved fishing gear casualties shall not apply to observed fishing vessel or fishing gear casualties.

§ 258.35 Amount of compensation.

(a) *General.* The amount of compensation under this subpart is the amount of casualty under paragraph (b) of this section minus the sum of any deduction for the negligence of the applicant under paragraph (e) of this section and any insurance proceeds under paragraph (f) of this section.

(b) *Amount of compensation.* If the property concerned is determined by the Chief, FSD, to be repairable at a cost less than its depreciated replacement cost, the amount of the casualty is the repair cost. The amount of the casualty for property which is totally (actually or constructively) lost or destroyed is its depreciated replacement cost.

(c) *Depreciated replacement cost.* For purposes of this section the depreciated replacement cost is the present replacement cost of the property (at the time the claim is submitted) involved in the casualty, depreciated (on a straightline basis over the property's economically useful life) so as to exclude that portion of the replacement cost which represents the property's already used economically useful life. The present replacement cost is the lower of the two submitted estimates required to be submitted under §258.33(g).

(d) *Economically useful life remaining.* (1) If the age, condition, and value of individual units of fishing gear involved in the casualty cannot be established to the satisfaction of the Chief, FSD, the Chief, FSD, shall use the average remaining economically useful life for all units identified in the inventory required by § 258.33 in calculating the depreciated replacement cost.

(2) If the average remaining economically useful life of fishing gear involved in the casualty is less than the average remaining economically useful life of all the property in the inventory required by § 258.33, the average remaining economically useful life of the fishing gear in the casualty will be used as the basis for calculating the depreciated replacement cost.

Example No. 1

(i) Applicant claims to have lost 100 crab pots with various remaining economically useful lives averaging 2.5 years. The applicant's fishing gear inventory shows that the applicant owns 500 crab pots (including the 100 involved in the casualty) with various remaining economically useful lives averaging 3.5 years.

(ii) The replacement cost of the 100 pots involved in the casualty will be depreciated as if they each had a remaining economically useful life of 2.5 years.

(iii) If the present replacement cost of the pots is $500 each and they have an economically useful life when new of 5 years, the depreciated replacement cost of each pot will be $250 (or 50% of the replacement cost), since 2.5 years (or 50% of their new economically useful life) was regarded as remaining at the time of the casualty.

(iv) Thus, the compensation would be 100 pots at a depreciated replacement cost of $250 each, for a total of $25,000.

(3) If the average remaining economically useful life of the fishing gear involved in the casualty is more than the average remaining economically useful life of all the fishing gear in the inventory required by § 258.33, the average remaining economically useful life of all the fishing gear in the inventory will be used as the basis for calculating the depreciated replacement cost.

Example No. 2

If the 100 lost crab pots described in example No. 1 under paragraph (d)(2) of this section, had an average remaining economically useful life of 4 years (instead of 2.5 years), then the 3.5-year average remaining economically useful life of all the fishing gear in the inventory would be used as the basis for depreciating the cost of the replacement pots. Since 3.5 years is 70% of the new economically useful life (5 years) of the pots, the compensation would be $35,000 (70% of $500 equals $350 times 100 pots equals $35,000).

(e) *Comparative negligence.* In calculating the amount of compensation under this subpart, the amount of casualty under paragraph (b) of this section will be reduced proportionally to the extent that any negligence of the applicant (or the applicant's agents) contributed to the cause or extent of the casualty.

Example: If the applicant's total damages were $25,000 and 10 percent (10%) of the damages were the result of the applicant's negligence, the applicant would receive $22,500 in compensation. If the negligence of the applicant had caused 90% of the loss, $2,500 in compensation would be received.

(f) *Insurance proceeds.* For purposes of calculating the amount of compensation under this paragraph, the amount of compensation under paragraph (b) of this section will be reduced by the amount the applicant has, or reasonably would have, received from a commercial policy of full hull and machinery and protection and indemnity insurance, whether or not such insurance was in effect at the time the casualty occurred. Recovery will be allowed for a reasonable deductible as set forth in § 258.32(f).

§ 258.36 Initial determination.

(a) *Time.* Within 60 days of the receipt of a properly completed application, the Chief, FSD, shall make an initial determination of the amount of any compensation to be paid the applicant.

(b) *Contents.* An initial determination shall state:

(1) If the application is disapproved, the reasons therefor; or

(2) If the application is approved, the amount of compensation and the basis upon which the amount was determined.

(c) *Notice.* The initial determination, along with the subrogation agreement (where applicable) provided for in §258.38, shall be mailed to the applicant.

§ 258.37 Final determination.

(a) *Final determination.* Unless appealed under paragraph (b) of this section, the initial determination of the Chief, FSD, shall become final 30 days after its issuance under § 258.36.

(b) *Appeal.* Any applicant may, within 30 days after the date of issuance of an initial determination under § 258.36, file with the Assistant Administrator at 3300 Whitehaven Street, Washington, D.C. 20235 a written request for review of the initial determination.

(c) *Additional evidence.* The applicant may submit to the Assistant Administrator written data relating to the initial determination no later than 30 calendar days after the filing of a petition under paragraph (b) of this section.

(d) *Appellate determination.* The Assistant Administrator shall issue a final determination on an appealed application within 60 days of the submission of any written data by the applicant under paragraph (c) of this section. A copy of the final determination shall be mailed to the applicant.

§ 258.38 Subrogation.

(a) After approval of an applicant's claim, but before compensation is disbursed, the applicant shall (when applicable to the cause to which the casualty was attributed) execute a subrogation agreement in a form satisfactory to the Chief, FSD, which:

(1) Assigns to the United States all rights which the applicant may have to proceed against any party who may be liable for damages with respect to any part of a casualty for which compensation is being made hereunder, and

(2) Gives, as a condition of continuing to retain the compensation, the applicant's undertaking to assist the Chief, FSD, in any reasonable way to pursue collection of the subrogated rights.

§ 258.39 Payments.

(a) *Amount.* The Chief, FSD, shall compensate the applicant in the amount calculated under § 258.35 minus the approval fee as determined according to paragraph (b) of this section. Payment shall be made to the applicant upon receipt (where required) of a properly executed subrogation agreement under § 258.38.

(b) *Approval fee.* The approval fee is 4 percent (4%) of the amount of compensation calculated under § 258.35, but in no case shall the sum of the approval fee and the filing fee under §258.33(k) exceed $1,000.

§ 258.40 Penalties.

Persons who willfully make any false or misleading statement or representation for the purpose of obtaining compensation under this subpart are subject to criminal prosecution pursuant to the provisions of 22 U.S.C. 1980(g), which provides penalties, upon conviction, of a fine of not more than $25,000, or imprisonment for not more than one year, or both. Any evidence of false or misleading statements or representations will be promptly forwarded to the U.S. Department of Justice for action.

PART 259—CAPITAL CONSTRUCTION FUND

JOINT TAX REGULATIONS

Sec.
259.1 Execution of agreements and deposits made in a Capital Construction Fund.

CAPITAL CONSTRUCTION FUND AGREEMENT

259.30 Application for Interim Capital Construction Fund Agreement ("Interim CCF Agreement").
259.31 Acquisition, construction, or reconstruction.
259.32 Conditional fisheries.

Sec.
259.33 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary's consent; first tax year for which Interim CCF Agreement is effective.
259.34 Minimum and maximum deposits; maximum time to deposit.
259.35 Annual deposit and withdrawal reports required.
259.36 CCF accounts.
259.37 Conditional consents to withdrawal qualification.
259.38 Miscellaneous.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114; Pub. L. 91-469, 84 Stat. 1018; sec. 21(a), 84 Stat. 1026. Sections 259.30-259.38 also issued under Reorg. Plan No. 4 of 1970, 86 Stat. 9090.

JOINT TAX REGULATIONS

§ 259.1 Execution of agreements and deposits made in a Capital Construction Fund.

In the case of a taxable year of a taxpayer beginning after December 31, 1969, and before January 1, 1972, the rules governing the execution of agreements and deposits under such agreements shall be as follows:

(a) A capital construction fund agreement executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of his Federal income tax return for such taxable year or years will be deemed to be effective on the date of the execution of such agreement or as of the close of business of the last regular business day of each such taxable year or years to which such deposit relates, whichever day is earlier.

(b) Notwithstanding the provisions of paragraph (a) of this section, where: (1) For taxable years beginning after December 31, 1969, and prior to January 1, 1971, an application for a capital construction fund agreement is filed by a taxpayer prior to January 1, 1972, and a capital construction fund agreement is executed and entered into by the taxpayer prior to March 1, 1972, and (2) for taxable years beginning after December 31, 1970, and prior to January 1, 1972, an application for a capital construction fund agreement is filed by a taxpayer prior to January 1, 1973, and a capital construction fund agreement is executed and entered into by the taxpayer prior to March 1, 0973 (or, if earlier, 60 days after the publication of final joint regulations under section 607 of the Merchant Marine Act, 1936, as amended); then such a capital construction fund agreement will be deemed to be effective as of the close of business of the last regular business day of each such taxable year or years to which such deposit related.

(c) (1) Deposits made in a capital construction fund pursuant to such an agreement within 60 days after the date of execution of the agreement, or on or prior to the due date, with extensions, for the filing of his Federal income tax return for such taxable year or years, whichever date shall be later, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of each such taxable year or years to which such deposit relates, whichever day is earlier.

(2) Notwithstanding paragraph (c)(1) of this section, for taxable years beginning after December 31, 1970, and ending prior to January 1, 1972, deposits made later than the last date permitted under paragraph (c)(1) of this section but on or before January 9, 1973, in a capital construction fund pursuant to an agreement with the Secretary of Commerce, acting by and through the Administrator of the National Oceanic and Atmospheric Administration, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of such taxable year, whichever is earlier.

(d) Nothing in this section shall alter the rules and regulations governing the timing of deposits with respect to existing capital and special reserve funds or with respect to the treatment of deposits for any taxable year or years other than a taxable year or years beginning after December 31, 1969, and before January 1, 1972.[1]

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[1] The phrase "existing capital and special reserve funds" does not refer to the Capital Construction Fund program but rather to funds established with the Maritime Administration prior to the amendment of the

Continued

[37 FR 25025, Nov. 25, 1972, as amended at 38 FR 8163, Mar. 29, 1973]

CAPITAL CONSTRUCTION FUND AGREEMENT

SOURCE: Sections 259.30-259.38 appear at 39 FR 33675, Sept. 19, 1974, unless otherwise noted.

§ 259.30 Application for Interim Capital Construction Fund Agreement ("Interim CCF Agreement").

(a) *General qualifications.* To be eligible to enter into an Interim CCF Agreement an applicant must:

(1) Be a citizen of the United States (citizenship requirements are those for documenting vessels in the coastwise trade within the meaning of section 2 of the Shipping Act, 1916, as amended);

(2) Own or lease one or more eligible vessels (as defined in sec. 607(k)(1) of the Act) operating in the foreign or domestic commerce of the United States.

(3) Have an acceptable program for the acquisition, construction, or reconstruction of one or more qualified vessels (as defined in section 607(k)(2) of the Act). Qualified vessels must be for commercial operation in the fisheries of the United States. If the qualified vessel is 5 net tons or over, it must be documented in the fisheries of the United States. Dual documentation in both the fisheries and the coastwise trade of the United States is permissible. Any vessel which will carry fishing parties for hire must be inspected and certified (under 46 CFR Part 176) by the U.S. Coast Guard as qualified to carry more than six passengers or demonstrate to the Secretary's satisfaction that the carrying of fishing parties for hire will constitute its primary activity. The program must be a firm representation of the applicant's actual intentions. Vague or contingent objectives will not be acceptable.

(b) *Content of application.* Applicants seeking an Interim CCF Agreement may make application by letter providing the following information:

(1) Proof of U.S. citizenship;

(2) The first taxable year for which the Interim CCF Agreement is to apply (see § 259.33 for the latest time at which applications for an Interim CCF Agreement relating to a previous taxable year may be received);

(3) The following information regarding each "eligible vessel" which is to be incorporated in Schedule A of the Interim CCF Agreement for purposes of making deposits into a CCF pursuant to section 607 of the Act:

(i) Name of vessel,

(ii) Official number, or, in the case of vessels under 5 net tons, the State registration number where required,

(iii) Type of vessel (i.e., catching vessel, processing vessel, transporting vessel, charter vessel, barge, passenger carrying fishing vessel, etc.),

(iv) General characteristic (i.e., net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of passengers carried or in the case of vessels operating in the foreign or domestic commerce the various uses of the vessel, etc.),

(v) Whether owned or leased and, if leased, the name of the owner, and a copy of the lease,

(vi) Date and place of construction,

(vii) If reconstructed, date of redelivery and place of reconstruction,

(viii) Trade (or trades) in which vessel is documented and date last documented,

(ix) If a fishing vessel, the fishery of operation (which in this section means each species or group of species—each species must be specifically identified by acceptable common names—of fish, shellfish, or other living marine resources which each vessel catches, processes, or transports or will catch, process, or transport for commercial purposes such as marketing or processing the catch),

(x) If a fishing vessel, the area of operation (which for fishing vessels means the general geographic areas in which each vessel will catch, process, or transport, or charter for each species or group of species of fish, shellfish, or other living marine resources).

(4) The specific objectives to be achieved by the accumulation of assets in a Capital Construction Fund (to be incorporated in Schedule B of the Interim CCF Agreement) including:

Footnote continued
Merchant Marine Act, 1936, which authorized the Capital Construction Fund program.

(i) Number of vessels,

(ii) Type of vessel (i.e., catching, processing, transporting, or passenger carrying fishing vessel),

(iii) General characteristics (i.e., net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of passengers carried),

(iv) Cost of projects,

(v) Amount of indebtedness to be paid for vessels to be constructed, acquired, or reconstructed (all notes, mortgages, or other evidences of the indebtedness must be submitted as soon as available, together with sufficient additional evidence to establish that full proceeds of the indebtedness to be paid from a CCF under an Interim CCF Agreement, were used solely for the purpose of the construction, acquisition, or reconstruction of Schedule B vessels),

(vi) Date of construction, acquisition, or reconstruction,

(vii) Fishery of operation (which in this section means each species or group of species—each species must be specifically identified by acceptable common name—of fish, shellfish, or other living marine resources),

(viii) Area of operation (which in this section means the general geographic areas in which each vessel will will operate for each species or group of species of fish, shellfish, or other living marine resources).

(c) *Filing.* The application must be signed and submitted in duplicate to the Regional Office of the National Marine Fisheries Service's Financial Assistance Division corresponding to the region in which the party conducts its business. As a general rule, the Interim CCF Agreement must be executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of the Federal tax return in order to be effective for the tax year to which that return relates. It is manifestly in the Applicant's best interest to file at least 45 days in advance of such date.

[39 FR 33675, Sept. 19, 1974, as amended at 42 FR 65185, Dec. 30, 1978]

§ 259.31 Acquisition, construction, or reconstruction.

(a) *Acquisition.* No vessel having previously been operated in a fishery of the United States prior to its acquisition by the party seeking CCF withdrawal therefor shall be a qualified vessel for the purpose of acquisition, except in the cases specified in paragraphs (a)(1) and (2) of this section:

(1) A vessel not more than 5 years old, at the time of its acquisition by the party seeking CCF withdrawal therefor may be a qualified vessel for the purpose of acquisition, but only if each acquisition in this category becomes a Schedule A vessel and there exists for each acquisition in this category (on a one-for-one basis) an additional Schedule B construction or reconstruction. The sole consideration for permitting an acquisition in this category is that it will enable the party (but the Secretary will not attempt to predetermine such an ability) to accelerate accomplishment of the additional Schedule B construction or reconstruction. Should this consideration materially fail, the Secretary shall, at his discretion, disqualify previously qualified withdrawals in this category, seek liquidated damages as provided for in paragraph (a)(4) of this section and/or terminate the Interim CCF Agreement.

(2) A vessel more than 5 years old, but not more than 25 years old (special showing required if more than 25 years old, see paragraph (b) of this section), at the time of acquisition by the party seeking CCF withdrawal therefor may be a qualified vessel for the purpose of acquisition, but only if that same vessel becomes a Schedule A vessel and (in addition to being a Schedule B vessel for the purpose of its acquisition) becomes a Schedule B vessel for the purpose of that same vessel's reconstruction to be accomplished ordinarily within 7 years from the date of acquisition. The sole consideration for permitting an acquisition in this category is that it will enable a party (but the Secretary will not attempt to predetermine such an ability) to accelerate accomplishment of the Schedule B reconstruction of the vessel so acquired. Should this consideration materially fail, the same penalty prescribed in paragraph (a)(1) of this section applies.

(3) Reserved for minimum deposits under this section.

(4) Reserved for liquidated damages.

(b) *Reconstruction.* No reconstruction project costing less than $100,000 shall qualify a vessel for reconstruction, unless the reconstruction project costs, or will cost, 20 percent or more of the reconstructed vessel's acquisition cost (in its unreconstructed state) to the party seeking CCF withdrawal therefor. If the reconstruction project meets the $100,000 test, then the 20 percent test does not apply. Conversely, if the reconstruction project does not meet the $100,000 test, then the 20 percent test applies.

(1) Reconstruction may include rebuilding, replacing, reconditioning, converting and/or improving any portion of a vessel. A reconstruction project must, however, substantially prolong the useful life of the reconstructed vessel, increase its value, or adapt it to a different commercial use in the fishing trade or industry.

(2) All, or the major portion (ordinarily, not less than 80 percent), of a reconstruction project's actual cost must (for the purpose of meeting the above dollar or percentage tests) be classifiable as a capital expenditure for Internal Revenue Service (IRS) purposes. That otherwise allowable (i.e., for the purpose of meeting the above dollar or percentage tests) portion of a reconstruction project's actual cost which is not classifiable as a capital expenditure shall, however, be excluded from the amount qualified for withdrawal as a result of the reconstruction project.

(3) No vessel more than 25 years old at the time of withdrawal or request for withdrawal shall be a qualified vessel for the purpose of reconstruction unless a special showing is made, to the Secretary's discretionary satisfaction, that the type and degree of reconstruction intended will result in an efficient and productive vessel with an economically useful life at least 10 years beyond the date reconstruction is completed.

(c) *Time permitted for construction or reconstruction.* Construction or reconstruction must be completed within 18 months from the date construction or reconstruction first commences, unless otherwise consented to by the Secretary.

§ 259.32 Conditional fisheries.

(a) The Secretary may from time-to-time establish certain fisheries in which CCF benefits will be restricted. The regulatory mechanism for so doing is Part 251 of this chapter. Each fishery so restricted is termed a "conditional fishery". Subpart A of Part 251 of this chapter establishes the procedure to be used by the Secretary in proposing and adopting a fishery as a conditional fishery. Subpart B of Part 251 of this chapter enumerates each fishery actually adopted as a conditional fishery (Part 251 of this chapter should be referred to for details).

The purpose of this § 259.32 is to establish the effect of conditional fishery adoption upon Interim CCF Agreements.

(b) If a written request for an otherwise permissible action under an Interim CCF Agreement is submitted prior to the date upon which conditional fishery adoption occurs, then the Secretary will act, in an otherwise normal manner, upon so much of the action then applied for as is then permissible without regard to the subsequent adoption of a conditional fishery (even, if that adoption occurs before the Secretary gives his consent or issues an Interim CCF Agreement or amendment thereto, all as the case may be). Nevertheless, the conditions as set forth in paragraph (d) of this section shall apply.

(c) If a written request for an otherwise permissible action under an Interim CCF Agreement, or an application for an Interim CCF Agreement, is submitted after the date upon which conditional fishery adoption occurs, then the Secretary will act, in an otherwise normal manner, upon so much of the action then applied for as is then permissible without regard to the previous adoption of a conditional fishery provided, however, that this paragraph shall apply only to construction or reconstruction for which a binding contract has been reduced to writing prior to the date upon which conditional fishery adoption occurred. Nevertheless, the conditions as set forth in paragraph (d) of this section shall apply.

(d) Conditional fishery adoption shall have no effect whatsoever upon a Schedule B objective whose qualification for withdrawal (which may be in an amount equal to the total cost over time of a Schedule B objective, i.e., a series of withdrawals) has been, prior to the date of conditional fishery adoption, either consented to by the Secretary or requested in accordance with paragraph (b) or (c) of this section. This extends to past, present, and future withdrawals in an amount representing up to 100 percent of the cost of a Schedule B objective. Commencement of any project in these categories shall, however, be started not later than 6 months from the date of conditional fishery adoption and shall be completed within 24 months from the date of conditional fishery adoption, unless for good and sufficient cause shown the Secretary, at his discretion, consents to a longer period for either project commencement or completion. Consent to the qualification of withdrawal for any project in these categories not commenced or completed within the periods allowed shall be revoked at the end of the periods allowed.

(e) Conditional fishery adoption shall have no effect whatsoever upon Schedule B objectives which will not result in significantly increasing harvesting capacity in a fishery adopted as a conditional fishery.

(1) Construction of a new vessel (vessel "Y") for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless the party causing the "Y" vessel to be constructed causes (within 1 year after the delivery of vessel "Y") to be permanently removed from all fishing, or placed permanently in a fishery not then adopted as a conditional fishery, under such conditions as the Secretary may deem necessary or desirable, a vessel (vessel "Z") which has during the previous 18 months operated substantially in the same fishery as the "Y" vessel and which has a fishing capacity substantially equivalent to the "Y" vessel. Failure to remove a vessel could subject all withdrawals to be treated as nonqualified and may be cause for termination of the CCF. What constitutes substantially equivalent fishing capacity shall be a matter for the Secretary's discretion. Ordinarily, in exercising his discretion about what does or does not constitute substantially equivalent fishing capacity, the Secretary will take into consideration (i) the average size of vessels constructed for the adopted conditional fishery in question at the time vessel "Z" was constructed (or, if constructed for a different fishery, the average size of vessels in the adopted conditional fishery at the time vessel "Z" entered it), (ii) the average size of vessels constructed for the adopted conditional fishery at the time vessel "Y" was or will be constructed, and (iii) such other factors as the Secretary may deem material and equitable, including the length of time the party had owned or leased vessel "Z" and the length of time the vessel has operated in the conditional fishery. The Secretary will consider these factors, and exercise his discretion, in such a way as to encourage use of this program by established fishermen who have owned or leased for substantial periods vessels which need to be replaced, even though a "Z" vessel may have been constructed at a time which dictated a lesser fishing capacity than dictated for a "Y" vessel at the time of its construction.

(2) Acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless the vessel to be acquired and/or reconstructed had during the previous 3 years operated substantially in the same fishery as the adopted conditional fishery in which it will operate after acquisition and/or reconstruction. If less than 3 years, then acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless there occurs vessel removal or permanent placement elsewhere under the same conditions specified for construction in paragraph (e)(1) of this section.

(3) Construction of a new vessel or the acquisition and/or reconstruction of a used vessel for operation in an

adopted conditional fishery shall not be deemed to significantly increase the harvesting capacity where the vessel constructed, acquired and/or reconstructed replaces another vessel which was lost or destroyed and which had, immediately prior to the loss or destruction, operated in the same fishery as the adopted conditional fishery, provided, however, that the fishing capacity of the replacement vessel has a fishing capacity substantially equivalent to the vessel lost or destroyed and that the construction, acquisition and/or reconstruction is completed within 2 years after the close of the taxable year in which the loss or destruction occurred. The Secretary may, at his discretion, and for good and sufficient cause shown, extend the replacement period, provided that the request for extension of time to replace is timely filed with the Secretary

(f) Conditional fishery adoption shall have the following effect on all Schedule B objectives (whether for acquisition, construction, or reconstruction) which the Secretary deems to significantly increase harvesting capacity in that fishery, excluding those circumstances specifically exempted by paragraphs (b) through (e) of this section (which shall be governed by the provisions of paragraphs (b) through (e) of this section).

(1) The Secretary may nevertheless consent to the qualification of withdrawal, but only up to an amount not exceeding the total of eligible ceilings actually deposited during tax years other than the taxable year in which conditional fishery adoption occurs plus a pro-rata portion of eligible ceilings generated in the tax year in which conditional fishery adoption occurs. Pro-ration shall be according to the number of months or any part thereof in a party's tax year which elapse before the adoption of the conditional fishery occurs. For example, if a party's tax year runs from January 1, 1974, to December 31, 1974, and conditional fishery adoption occurs on August 15, 1974, (i.e., during the 8th month of the party's tax year), then the pro-rata portion for that year is eight-twelfths of the total eligible ceilings generated during that year.

(2) Qualified withdrawals in excess of the amount specified in paragraph (f)(1) of this section shall not, during the continuance of the adopted conditional fishery, be consented to. Parties at this point shall have the following option:

(i) Make, with the Secretary's consent, a nonqualified withdrawal of the excess and discontinue the future deposit of eligible ceilings (which may effect termination of the Interim CCF Agreement).

(ii) Reserve the excess, as well as the future deposit of eligible ceilings, for a Schedule B objective not then involving an adopted conditional fishery. If amendment of an Interim CCF Agreement is necessary in order to include a Schedule B objective not then involving an adopted conditional fishery, the party may, with the Secretary's consent, make the necessary amendment.

(iii) Reserve the excess, as well as the future deposit of eligible ceilings, for a Schedule B objective involving a then adopted conditional fishery in anticipation that the then adopted conditional fishery will eventually be disadopted, in which case all deposits of eligible ceilings will once again be eligible for the Secretary's consent as qualified withdrawals. If the adoption of a conditional fishery continues for a substantial length of time and there is no forseeable prospect of disadoption, then the Secretary, in his discretion, may require paragraph (f)(2)(i) or (ii) of this section to be effected.

(g) The Secretary shall neither enter into a new Interim CCF Agreement, nor permit amendment of an existing one, which involves a Schedule B objective in a then adopted conditional fishery unless paragraph (b), (c) or (d) of this § 259.32 applies or unless the Schedule B objective is expressly conditioned upon acquisition construction, or reconstruction of the type permitted under paragraph (e) of this § 259.32. Such an express condition would not survive beyond the time at which conditional fishery status is removed.

§ 259.33 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary's consent; first tax year for which Interim CCF Agreement is effective.

(a) *Periods controlling permissibility.* For the purpose of this § 259.33, the period between the beginning and the end of a party's tax year is designated "Period (aa)"; the period between the end of a party's tax year and the party's tax due date for that tax year is designated "Period (bb)"; the period between the party's tax due date and the date on which ends the party's last extension (if any) of that tax due date is designated "Period (cc)".

(b) *Constructive deposits and withdrawals (before Interim CCF Agreement effectiveness date).* Constructive deposits and withdrawals shall be permissible only during the Period (aa) during which a written application for an interim CCF Agreement is submitted to the Secretary and so much of the next succeeding Period (aa), if any, which occurs before the Secretary executes the Interim CCF Agreement previously applied for. All otherwise qualified expenditures of eligible ceilings during Period (aa) may be consented to by the Secretary as constructive deposits and withdrawals: *Provided,* The applicant's application for an Interim CCF Agreement and for consent to constructive deposit and withdrawal qualification (together with sufficient supporting data to enable the Secretary's execution or issuance of consent) is submitted to the Secretary either before the end of Period (bb) or, if extension was requested and received, before the end of Period (cc). If, however, the Secretary receives the completed application in proper form so close to the latest permissible period that the Interim CCF Agreement cannot be executed and/or the consent given before the end of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the applicant to negotiate with the Internal Revenue Service (IRS) for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary willl nevertheless execute the Interim CCF Agreement and issue his consent however long past the applicant's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the applicant's having failed to apply in a more timely fashion.

(c) *Constructive deposits (after Interim CCF Agreement effectiveness date).* The Secretary shall not permit constructive deposits or withdrawals after the effective date of an Interim CCF Agreement. Eligible ceilings must, after the effective date of an interim CCF Agreement, be physically deposited in money or kind in scheduled depositories before the last date eligible ceilings for any Period (aa) of any party become ineligible for deposit (the last date being Period (bb) or Period (cc), whichever applies).

(d) *Ratification of withdrawals (as-qualified) made without first having obtained Secretary's consent.* The Secretary may ratify as qualified any withdrawal made without first having obtained the Secretary's consent therefor, provided the withdrawal was such as would have resulted in the Secretary's consent had it been requested before withdrawal, and provided further that the party's request for consent (together with sufficient supporting data to enable issuance of the Secretary's consent) is submitted to the Secretary either before the end of Period (bb) or, if extension was requested and received, before the end of Period (cc).

(1) If, however, the Secretary receives the request in proper form so close to the latest permissible period that the consent cannot be given before expiration of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the party to negotiate with IRS for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless issue his consent however long past the party's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the

same as merely due to the party's having failed to apply in a more timely fashion.

(2) All parties shall be counseled that it is manifestly in their best interest to request the Secretary's consent 45 days in advance of the expected date of withdrawal. Withdrawals made without the Secretary's consent, in reliance on obtaining the Secretary's consent, are made purely at a party's own risk. Should any withdrawal made without the Secretary's consent prove, for any reason, to be one to which the Secretary will not or cannot consent by ratification, then the result will be either, or both, at the Secretary's discretion, an unqualified withdrawal or an involuntary termination of the Interim CCF Agreement.

(3) Should the withdrawal made without having first obtained the Secretary's consent be made in pursuance of a project not then an eligible Schedule B objective, then the Secretary may entertain an application to amend the Interim CCF Agreement's Schedule B objectives as the prerequisite to consenting by ratification to the withdrawal, all under the same time constraints and conditions as otherwise specified herein.

(4) Any withdrawals made, after the effective date of an Interim CCF Agreement, without the Secretary's consent are automatically non-qualified withdrawals unless the Secretary subsequently consents to them by ratification as otherwise specified herein.

(5) Redeposit of that portion of the ceiling withdrawn without the Secretary's consent, and for which such consent is not subsequently given (either by ratification or otherwise), shall not be permitted. If such a nonqualified withdrawal adversely affects the Interim CCF Agreement's general status in any wise deemed by the Secretary, at his discretion, to be significant and material, the Secretary may involuntarily terminate the Interim CCF Agreement.

(e) *First tax year for which Interim CCF Agreement is effective.* An Agreement, to be effective for any party's Period (aa), must be executed and entered into by the party, and submitted to the Secretary, before the end of Period (bb) or Period (cc), whichever applies, for such Period (aa). If executed and entered into by the party, and/or received by the Secretary, after the end of Period (bb) or Period (cc), whichever applies, then the Agreement will be first effective for the next succeeding Period (aa).

(1) If, however, the Secretary receives an Agreement executed and entered into by the party in proper form so close to the latest permissible period that the Secretary cannot execute the Agreement before expiration of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the party to negotiate with IRS for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless execute the Agreement however long past the party's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the party's having failed to apply in a more timely manner.

(2) All parties shall be counseled that it is manifestly in their best interest to enter into and execute an Agreement, and submit the same to the Secretary, at least 45 days in advance of the Period (bb) or Period (cc), whichever applies, for the Period (aa) for which the Agreement is first intended to be effective.

§ 259.34 Minimum and maximum deposits; maximum time to deposit.

(a) *Minimum annual deposit.* The minimum annual (based on each party's taxable year) deposit required by the Secretary in order to maintain an Interim CCF Agreement shall be an amount equal to 2 percent of the total anticipated cost of all Schedule B objectives unless such 2 percent exceeds during any tax year 50 percent of a party's Schedule A taxable income, in which case the minimum deposit for that year shall be 50 percent of the party's Schedule A taxable income.

(1) Minimum annual deposit compliance shall be audited at the end of each party's taxable year unless any one or more of the Schedule B objectives is scheduled for commencement

more than 3 taxable years in advance of the taxable year in which the agreement is effected, in which case minimum annual deposit compliance shall be audited at the end of each 3 year taxable period. In any taxable year, a Party may apply any eligible amount in excess of the 2 percent minimum annual deposit toward meeting the party's minimum annual deposit requirement in past or future years: *Provided, however,* At the end of each 3 year period, the aggregate amount in the fund must be in compliance with 2 percent minimum annual deposit rule (unless the 50 percent of taxable income situation applies).

(2) The Secretary may, at his discretion and for good and sufficient cause shown, consent to minimum annual deposits in any given tax year or combination of tax years in an amount lower than prescribed herein: *Provided,* The party demonstrates to the Secretary's satisfaction the availability of sufficient funds from any combination of sources to accomplish Schedule B objectives at the time they are scheduled for accomplishment.

(b) *Maximum deposits.* Other than the maximum annual ceilings established by the Act, the Secretary shall not establish a maximum annual ceiling: *Provided, however,* That deposits can no longer be made once a party has deposited 100 percent of the anticipated cost of all Schedule B objectives, unless the Interim CCF Agreement is then amended to establish additional Schedule B objectives.

(c) *Maximum time to deposit.* Ten years shall ordinarily be the maximum time the Secretary shall permit in which to accumulate deposits prior to commencement of any given Schedule B objective. A time longer than 10 years, either by original scheduling or by subsequent extension through amendment, may, however, be permitted at the Secretary's discretion and for good and sufficient cause shown.

§ 259.35 Annual deposit and withdrawal reports required.

(a) The Secretary shall require from each Interim CCF agreement holder annual deposit and withdrawal report for each tax year, on a form prescribed by the Secretary, not later than 30 days after expiration of the due date, with extensions (if any), for filing the party's tax return. The required annual deposit and withdrawal reports shall be submitted for each scheduled depository, even if the reports are negative. Each report shall bear the account number of each CCF account in each scheduled depository. Each withdrawal report shall contain the party's certification that there were during the tax year involved no withdrawals other than those enumerated on the withdrawal report.

(b) Failure to submit the required annual deposit and withdrawal reports shall be cause after due notice for either, or both, disqualification of withdrawals or involuntary termination of the Interim CCF Agreement, at the Secretary's discretion.

(c) Additionally, the Secretary shall require from each Interim CCF Agreement holder, not later than 30 days after expiration of the party's tax due date, with extensions (if any), a copy of the party's Federal Income Tax Return filed with IRS for the preceding tax year. Failure to submit shall after due notice be cause for the same adverse action specified in the paragraph above.

§ 259.36 CCF accounts.

(a) *General:* Each CCF account in each scheduled depository shall have an account number, which must be reflected on the reports required by § 259.35. All CCF accounts shall be reserved only for CCF transactions. There shall be no intermingling of CCF and non-CCF transactions and there shall be no pooling of 2 or more CCF accounts without prior consent of the Secretary. Safe deposit boxes, safes, or the like shall not be eligible CCF depositories without the Secretary's consent and then only under such conditions as the Secretary, in his discretion, prescribes.

(b) *Assignment:* The use of Fund assets for transactions in the nature of a countervailing balance, compensating balance, pledge, assignment, or similar security arrangement shall constitute a material breach of the Agreement unless prior written consent of the Secretary is obtained.

(c) *Depositories:* (1) Section 607(c) of the Act provides that amounts in a CCF must be kept in the depository or depositories specified in the Agreements and be subject to such trustee or other fiduciary requirements as the Secretary may specify.

(2) Unless otherwise specified in the Agreement, the party may select the type or types of accounts in which the assets of the Fund may be deposited.

(3) Non-cash deposits or investments of the Fund should be placed in control of a trustee under the following conditions:

(i) The trustee should be specified in the Agreement;

(ii) The trust instrument should provide that all investment restrictions stated in section 607(c) of the Act will be observed;

(iii) The trust instrument should provide that the trustee will give consideration to the party's withdrawal requirements under the Agreement when investing the Fund;

(iv) The trustee must agree to be bound by all rules and regulations which have been or will be promulgated governing the investment or management of the Fund.

§ 259.37 Conditional consents to withdrawal qualification.

The Secretary may conditionally consent to the qualification of withdrawal, such consent being conditional upon the timely submission to the Secretary of such further proofs, assurances, and advices as the Secretary, in his discretion, may require. Failure of a party to comply with the conditions of such a consent within a reasonable time and after due notice shall, at the Secretary's discretion, be cause for either, or both, nonqualification of withdrawal or involuntary Interim CCF Agreement termination.

§ 259.38 Miscellaneous.

(a) Wherever the Secretary prescribes time constraints herein for the submission of any CCF transactions, the postmark date shall control if mailed or, if personally delivered, the actual date of submission. All required materials may be submitted to any Financial Assistance Division office of the National Marine Fisheries Service.

(b) All CCF information received by the Secretary shall be held strictly confidential, except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the identity of any fundholder.

(c) While recognizing that precise regulations are necessary in order to treat similarly situated parties similarly, the Secretary also realizes that precision in regulations can often cause inequitable effects to result from unavoidable, unintended, or minor discrepancies between the regulations and the circumstances they attempt to govern. The Secretary will, consequently, at his discretion, as a matter of privilege and not as a matter of right, attempt to afford relief to parties where literal application of the purely procedural, as opposed to substantive, aspects of these regulations would otherwise work an inequitable hardship. This privilege will be sparingly granted and no party should before the fact attempt to act in reliance on its being granted after the fact.

(d) These §§ 259.30 through 259.38 are applicable absolutely to all Interim CCF Agreements first entered into (or the amendment of all then existing Interim CCF Agreements, which amendment is first entered into) on or after the date these §§ 259.30 through 259.38 are adopted. These §§ 259.30 through 259.38 are applicable to all Interim CCF Agreements entered into before the date these §§ 259.30 through 259.38 are adopted, with the following exceptions only:

(1) The vessel age limitations imposed by § 259.31 shall not apply to already scheduled Schedule B objectives.

(2) The minimum deposits imposed by § 259.34 shall not apply to any party's tax year before that party's tax year next following the one in which these §§ 259.30 through 259.38 are adopted.

(e) These §§ 259.30 through 259.38 are specifically incorporated in all past, present, and future Interim CCF Agreements by reference thereto made in Whereas Clause number 2 of all such Interim CCF Agreements.

SUBCHAPTER G—PROCESSED FISHERY PRODUCTS, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

PART 260—INSPECTION AND CERTIFICATION

Subpart A—Inspection and Certification of Establishments and Fishery Products for Human Consumption

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AUTHORITY: Sec. 6, 70 Stat. 1122, 16 U.S.C. 742e; secs. 203, 205, 60 Stat. 1087, 1090 as amended; 7 U.S.C. 1622, 1624.

SOURCE: 31 FR 16052, Dec. 15, 1966, unless otherwise noted.

Subpart A—Inspection and Certification of Establishments and Fishery Products for Human Consumption

§ 260.1 Administration of regulations.

The Secretary of Commerce is charged with the administration of the regulations in this part except that he may delegate any or all of such functions to any officer or employee of the National Marine Fisheries Service of the Department in his discretion.[1]

[36 FR 21037, Nov. 3, 1971]

DEFINITIONS

§ 260.6 Terms defined.

Words in the regulations in this part in the singular form shall be deemed to import the plural and vice versa, as the case may demand. For the purposes of the regulations in this part, unless the context otherwise requires, the following terms shall have the following meanings:

Acceptance number. "Acceptance number" means the number in a sampling plan that indicates the maximum number of deviants permitted in a sample of a lot that meets a specific requirement.

Act. "Act" means the applicable provisions of the Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., as amended; 7 U.S.C. 1621 et seq.).

Applicant. "Applicant" means any interested party who requests inspection service under the regulations in this part.

Case. "Case" means the number of containers (cased or uncased) which, by the particular industry are ordinarily packed in a shipping container.

Certificate of loading. "Certificate of loading" means a statement, either written or printed, issued pursuant to the regulations in this part, relative to check-loading of a processed product subsequent to inspection thereof.

Certificate of sampling. "Certificate of sampling" means a statement, either written or printed issued pursuant to the regulations in this part, identifying officially drawn samples and may include a description of condition of containers and the condition under which the processed product is stored.

Class. "Class" means a grade or rank of quality.

Condition. "Condition" means the degree of soundness of the product which may affect its merchantability and includes, but is not limited to these factors which are subject to change as a result of age, improper preparation and processing, improper packaging, improper storage, or improper handling.

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[1] All functions of the Department of Agriculture which pertain to fish, shellfish, and any products thereof, now performed under the authority of Title II of the Act of August 14, 1946, popularly known as the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627) including but not limited to the development and promulgation of grade standards, the inspection and certification, and improvement of transportation facilities and rates for fish and shellfish and any products thereof, were transferred to the Department of the Interior by the Director of the Budget (23 FR 2304) pursuant to section 6(a) of the Act of Aug. 8, 1956, popularly known as the Fish and Wildlife Act of 1956 (16 U.S.C. 742e). Reorganization Plan No. 4 of 1970 (84 Stat. 2090) transferred, among other things, such functions from the U.S. Department of the Interior to the U.S. Department of Commerce.

Department. "Department" means the U.S. Department of Commerce.

Deviant. "Deviant" means a sample unit affected by one or more deviations or a sample unit that varies in a specifically defined manner from the requirements of a standard, specification, or other inspection document.

Deviation. "Deviation" means any specifically defined variation from a particular requirement.

Director. "Director" means the Director of the National Marine Fisheries Service.

Establishment. "Establishment" means any premises, buildings, structures, facilities, and equipment (including vehicles) used in the processing, handling, transporting, and storage of fish and fishery products.

Inspection certificate. "Inspection certificate" means a statement, either written or printed, issued pursuant to the regulations in this part, setting forth in addition to appropriate descriptive information relative to a processed product, and the container thereof, the quality and condition, or any part thereof, of the product and may include a description of the conditions under which the product is stored.

Inspection service. "Inspection service" means:

(1) The sampling pursuant to the regulations in this part;

(2) The determination pursuant to the regulations in this part of:

(i) Essential characteristics such as style, type, size, or identity of any processed product which differentiates between major groups of the same kind;

(ii) The class, quality, and condition of any processed product, including the condition of the container thereof by the examination of appropriate samples;

(3) The issuance of any certificate of sampling, inspection certificates, or certificates of loading of a processed product, or any report relative to any of the foregoing; or

(4) Performance by an inspector of any related services such as to observe the preparation of the product from its raw state through each step in the entire process; or observe conditions under which the product is being harvested, prepared, handled, stored, processed, packed, preserved, transported, or held; or observe sanitation as a prerequisite to the inspection of the processed product, either on a contract basis or periodic basis; or checkload the inspected processed product in connection with the marketing of the product, or any other type of service of a consultative or advisory nature related herewith.

Inspector. "Inspector" means any employee of the Department authorized by the Secretary or any other person licensed by the Secretary to investigate, sample, inspect, and certify in accordance with the regulations in this part to any interested party the class, quality and condition of processed products covered in this part and to perform related duties in connection with the inspection service.

Interested party. "Interested party" means any person who has a financial interest in the commodity involved.

Licensed sampler. "Licensed sampler" means any person who is authorized by the Secretary to draw samples of processed products for inspection service, to inspect for identification and condition of containers in a lot, and may, when authorized by the Secretary, perform related services under the act and the regulations in this part.

Lot. "Lot" has the following meanings:

(1) For the purpose of charging fees and issuing certificates, "Lot" means any number of containers of the same size and type which contain a processed product of the same type and style located in the same or adjacent warehouses and which are available for inspection at any one time: *Provided,* That:

(i) Processed products in separate piles which differ from each other as to grade or other factors may be deemed to be separate lots;

(ii) Containers in a pile bearing an identification mark different from other containers of such processed product in that pile, if determined to be of lower grade or deficient in other factors, may be deemed to be a separate lot; and

(iii) If the applicant requests more than one inspection certificate covering different portions of such processed product, the quantity of the product covered by each certificate shall be deemed to be a separate lot.

(2) For the purpose of sampling and determining the grade or compliance with a specification, "Lot" means each pile of containers of the same size and type containing a processed product of the same type and style which is separated from other piles in the same warehouse, but containers in the same pile bearing an identification mark different from other containers in that pile may be deemed to be a separate lot.

Official establishment. "Official establishment" means any establishment which has been approved by National Marine Fisheries Service, and utilizes inspection service on a contract basis.

Officially drawn sample. "Officially-drawn sample" means any sample that has been selected from a particular lot by an inspector, licensed sampler, or by any other person authorized by the Secretary pursuant to the regulations in this part.

Person. "Person" means any individual, partnership, association, business trust, corporation, any organized group of persons (whether incorporated or not), the United States (including, but not limited to, any corporate agencies thereof), any State, county, or municipal government, any common carrier, and any authorized agent of any of the foregoing.

Plant. "Plant" means the premises, buildings, structures, and equipment (including, but not being limited to, machines, utensils, and fixtures) employed or used with respect to the manufacture or production of processed products.

Processed product. "Processed product" means any fishery product or other food product covered under the regulations in this part which has been preserved by any recognized commercial process, including, but not limited to, canning, freezing, dehydrating, drying, the addition of chemical substances, or by fermentation.

Quality. "Quality" means the inherent properties of any processed product which determine the relative degree of excellence of such product, and includes the effects of preparation and processing, and may or may not include the effects of packing media, or added ingredients.

Rejection number. "Rejection number" means the number in a sampling plan that indicates the minimum number of deviants in a sample that will cause a lot to fail a specific requirement.

Sample. "Sample" means any number of sample units to be used for inspection.

Sample unit. "Sample unit" means a container and/or its entire contents, a portion of the contents of a container or other unit of commodity, or a composite mixture of a product to be used for inspection.

Sampling. "Sampling" means the act of selecting samples of processed products for the purpose of inspection under the regulations in this part.

Secretary. "Secretary" means the Secretary of the Department or any other officer or employee of the Department authorized to exercise the powers and to perform the duties of the Secretary in respect to the matters covered by the regulations in this part.

Shipping container. "Shipping container" means an individual container designed for shipping a number of packages or cans ordinarily packed in a container for shipping or designed for packing unpackaged processed products for shipping.

Unofficially drawn sample. "Unofficially drawn sample" means any sample that has been selected by any person other than an inspector or licensed sampler, or by any other person not authorized by the Director pursuant to the regulations in this part.

Wholesome. "Wholesome" means the minimum basis of acceptability for human food purposes, of any fish or fishery product as defined in section 402 of the Federal Food, Drug, and Cosmetic Act, as amended.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 21037, Nov. 3, 1971]

§ 260.7 Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act

Subsection 203(h) of the Agricultural Marketing Act of 1946 provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:

Official certificate. "Official certificate" means any form of certification, either written or printed, including those defined in § 260.6, used under this part to certify with respect to the inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications).

Official device. "Official device" means a stamping appliance, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Director for the purpose of applying any official mark or other identification to any product or the packaging material thereof.

Official identification. "Official identification" means any United States (U.S.) standard designation of class, grade, quality, size, quantity, or condition specified in this part or any symbol, stamp, label, or seal indicating that the product has been graded or inspected and/or indicating the class, grade, quality, size, quantity, or condition of the product approved by the Director and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

Official mark. "Official mark" means the grade mark, inspection mark, combined form of inspection and grade mark, and any other mark, or any variations in such marks, including those prescribed in § 260.86, approved by the Secretary and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product, stating that the product was graded or inspected or both, or indicating the appropriate U.S. Grade or condition of the product, or for the purpose of maintaining the identity of products graded or inspected or both under this part.

Official memorandum. "Official memorandum" means any initial record of findings made by an authorized person in the process of grading, inspecting, or sampling pursuant to this part, any processing or plant-operation report made by an authorized person in connection with grading, inspecting, or sampling under this part, and any report made by an authorized person of services performed pursuant to this part.

INSPECTION SERVICE

§ 260.12 Where inspection service is offered.

Inspection service may be furnished wherever an inspector or licensed sampler is available and the facilities and conditions are satisfactory for the conduct of such service.

§ 260.13 Who may obtain inspection service.

An application for inspection service may be made by any interested party, including, but not limited to, the United States and any instrumentality or agency thereof, any State, county, municipality, or common carrier, and any authorized agent in behalf of the foregoing.

§ 260.14 How to make application.

An application for inspection service may be made to the officer of inspection or to any inspector, at or nearest the place where the service is desired. An up-to-date list of the Inspection Field Offices of the Department may be obtained upon request to the Director. Satisfactory proof that the applicant is an interested party shall be furnished.

§ 260.15 Information required in connection with application.

Application for inspection service shall be made in the English language and may be made orally (in person or by telephone), in writing, or by telegraph. If an application for inspection service is made orally, such application shall be confirmed promptly in writing. In connection with each application for inspection service, there shall be furnished such information as may be necessary to perform an inspection on the processed product for which application for inspection is made, including but not limited to, the name of the product, name and address of the packer or plant where such product was packed, the location of the product, its lot or car number, codes or other identification marks, the number of containers, the type and size of the containers, the interest of the applicant in the product, whether the lot has been inspected previously to the application by any Federal agency and the purpose for which inspection is desired.

§ 260.16 Filing of application.

An application for inspection service shall be regarded as filed only when made in accordance with the regulations in this part.

§ 260.17 Record of filing time.

A record showing the date and hour when each application for inspection or for an appeal inspection is received shall be maintained.

§ 260.18 When application may be rejected.

An application for inspection service may be rejected by the Secretary (a) for noncompliance by the applicant with the regulations in this part, (b) for nonpayment for previous inspection services rendered, (c) when the product is not properly identifiable by code or other marks, or (d) when it appears that to perform the inspection service would not be to the best interests of the Government. Such applicant shall be promptly notified of the reason for such rejection.

§ 260.19 When application may be withdrawn.

An application for inspection service may be withdrawn by the applicant at any time before the inspection is performed: *Provided,* That, the applicant shall pay at the hourly rate prescribed in § 260.70 for the time incurred by the inspector in connection with such application, any travel expenses, telephone, telegraph or other expenses which have been incurred by the inspection service in connection with such application.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 18738, Sept. 21, 1971]

§ 260.20 Disposition of inspected sample.

Any sample of a processed product that has been used for inspection may be returned to the applicant, at his request and expense; otherwise it shall be destroyed, or disposed of to a charitable institution.

§ 260.21 Basis of inspection and grade or compliance determination.

(a) Inspection service shall be performed on the basis of the appropriate U.S. standards for grades of processed products, Federal, Military, Veterans Administration or other government agency specifications, written contract specification, or any written specification or instruction which is approved by the Secretary.

(b) Unless otherwise approved by the Director compliance with such grade standards, specifications, or instructions shall be determined by evaluating the product, or sample, in accordance with the requirements of such standards, specifications, or instructions: *Provided,* That when inspection for quality is based on any U.S. grade standard which contains a scoring system the grade to be assigned to a lot is the grade indicated by the average of the total scores of the sample units: *Provided further,* That:

(1) Such sample complies with the applicable standards of quality promulgated under the Federal Food, Drug, and Cosmetic Act;

(2) Such sample complies with the product description;

(3) Such sample meets the indicated grade with respect to factors of quality which are not rated by score points; and

(4) With respect to those factors of quality which are rated by score

points, each of the following requirements is met:

(i) None of the sample units falls more than one grade below the indicated grade because of any quality factor to which a limiting rule applies;

(ii) None of the sample units falls more than 4 score points below the minimum total score for the indicated grade; and

(iii) The number of sample units classed as deviants does not exceed the applicable acceptance number indicated in the sampling plans contained in § 260.61. A "deviant," as used in this paragraph, means a sample unit that falls into the next grade below the indicated grade but does not score more than 4 points below the minimum total score for the indicated grade.

(5) If any of the provisions contained in paragraphs (b)(3) and (4) of this section are not met the grade is determined by considering such provisions in connection with succeedingly lower grades until the grade of the lot, if assignable, is established.

§ 260.22 Order of inspection service.

Inspection service shall be performed, insofar as practicable, in the order in which applications therefor are made except that precedence may be given to any such applications which are made by the United States (including, but not being limited to, any instrumentality or agency thereof) and to any application for an appeal inspection.

§ 260.23 Postponing inspection service.

If the inspector determines that it is not possible to accurately ascertain the quality or condition of a processed product immediately after processing because the product has not reached equilibrium in color, or drained weight, or for any other substantial reason, he may postpone inspection service for such period as may be necessary.

§ 260.24 Financial interest of inspector.

No inspector shall inspect any processed product in which he is directly or indirectly financially interested.

§ 260.25 Forms of certificates.

Inspection certificates, certificates of sampling or loading, and other memoranda concerning inspection service shall be issued on forms approved by the Secretary.

§ 260.26 Issuance of certificates.

(a) An inspection certificate may be issued only by an inspector: *Provided*, That, another employee of the inspection service may sign any such certificate covering any processed product inspected by an inspector when given power of attorney by such inspector and authorized by the Secretary, to affix the inspector's signature to an inspection certificate which has been prepared in accordance with the facts set forth in the notes, made by the inspector, in connection with the inspection.

(b) A certificate of loading shall be issued and signed by the inspector or licensed sampler authorized to check the loading of a specific lot of processed products: *Provided*, That, another employee of the inspection service may sign such certificate of loading covering any processed product checkloaded by an inspector or licensed sampler when given power of attorney by such inspector or licensed sampler and authorized by the Secretary to affix the inspector's or licensed sampler's signature to a certificate of loading which has been prepared in accordance with the facts set forth in the notes made by the inspector or licensed sampler in connection with the checkloading of a specific lot of processed products.

§ 260.27 Issuance of corrected certificates.

A corrected inspection certificate may be issued by the inspector who issued the original certificate after distribution of a certificate if errors, such as incorrect dates, code marks, grade statements, lot or car numbers, container sizes, net or drained weights, quantities, or errors in any other pertinent information require the issuance of a corrected certificate. Whenever a corrected certificate is issued, such certificate shall supersede the inspection certificate which was issued in error and the superseded certificate shall become null and void after the issuance of the corrected certificate.

§ 260.28 Issuance of an inspection report in lieu of an inspection certificate.

A letter report in lieu of an inspection certificate may be issued by an inspector when such action appears to be more suitable than an inspection certificate: *Provided*, That, the issuance of such report is approved by the Secretary.

§ 260.29 Disposition of inspection certificates.

The original of any inspection certificate, issued under the regulations in this part, and not to exceed four copies thereof, if requested prior to issuance, shall be delivered or mailed promptly to the applicant, or person designated by the applicant. All other copies shall be filed in such manner as the Secretary may designate. Additional copies of any such certificates may be supplied to any interested party as provided in § 260.78.

§ 260.30 Report of inspection results prior to issuance of formal report.

Upon request of any interested party, the results of an inspection may be telegraphed or telephoned to him, or to any other person designated by him, at his expense.

APPEAL INSPECTION

§ 260.36 When appeal inspection may be requested.

An application for an appeal inspection may be made by any interested party who is dissatisfied with the results of an inspection as stated in an inspection certificate, if the lot of processed products can be positively identified by the inspection service as the lot from which officially drawn samples were previously inspected. Such application shall be made within thirty (30) days following the day on which the previous inspection was performed, except upon approval by the Secretary the time within which an application for appeal inspection may be made, may be extended.

§ 260.37 Where to file for an appeal inspection and information required.

(a) Application for an appeal inspection may be filed with:

(1) The inspector who issued the inspection certificate on which the appeal covering the processed product is requested; or

(2) The inspector in charge of the office of inspection at or nearest the place where the processed product is located.

(b) The application for appeal inspection shall state the location of the lot of processed products and the reasons for the appeal; and date and serial number of the certificate covering inspection of the processed product on which the appeal is requested, and such application may be accompanied by a copy of the previous inspection certificate and any other information that may facilitate inspection. Such application may be made orally (in person or by telephone), in writing, or by telegraph. If made orally, written confirmation shall be made promptly.

§ 260.38 When an application for an appeal inspection may be withdrawn.

An application for appeal inspection may be withdrawn by the applicant at any time before the appeal inspection is performed: *Provided*, That the applicant shall pay at the hourly rate prescribed in § 260.70, for the time incurred by the inspector in connection with such application, any travel expenses, telephone, telegraph, or other expenses which have been incurred by the inspection service in connection with such application.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 18738, Sept. 21, 1971]

§ 260.39 When appeal inspection may be refused.

An application for an appeal inspection may be refused if:

(a) The reasons for the appeal inspection are frivolous or not substantial;

(b) The quality or condition of the processed product has undergone a material change since the inspection covering the processed product on which the appeal inspection is requested;

(c) The lot in question is not, or cannot be made accessible for the selection of officially drawn samples;

(d) The lot relative to which appeal inspection is requested cannot be positively identified by the inspector as the lot from which officially drawn samples were previously inspected; or

(e) There is noncompliance with the regulations in this part. Such applicant shall be notified promptly of the reason for such refusal.

§ 260.40 Who shall perform appeal inspection.

An appeal inspection shall be performed by an inspector or inspectors (other than the one from whose inspection the appeal is requested) authorized for this purpose by the Secretary and, whenever practical, such appeal inspection shall be conducted jointly by two such inspectors: *Provided,* That the inspector who made the inspection on which the appeal is requested may be authorized to draw the samples when another inspector or licensed sampler is not available in the area where the product is located.

§ 260.41 Appeal inspection certificate.

After an appeal inspection has been completed, an appeal inspection certificate shall be issued showing the results of such appeal inspection; and such certificate shall supersede the inspection certificate previously issued for the processed product involved. Each appeal inspection certificate shall clearly identify the number and date of the inspection certificate which it supersedes. The superseded certificate shall become null and void upon the issuance of the appeal inspection certificate and shall no longer represent the quality or condition of the processed product described therein. The inspector or inspectors issuing an appeal inspection certificate shall forward notice of such issuance to such persons as he considers necessary to prevent misuse of the superseded certificate if the original and all copies of such superseded certificate have not previously been delivered to the inspector or inspectors issuing the appeal inspection certificate. The provisions in the regulations in this part concerning forms of certificates, issuance of certificates, and disposition of certificates shall apply to appeal inspection certificates, except that copies of such appeal inspection certificates shall be furnished all interested parties who received copies of the superseded certificate.

LICENSING OF SAMPLERS AND INSPECTORS

§ 260.47 Who may become licensed sampler.

Any person deemed to have the necessary qualifications may be licensed as a licensed sampler to draw samples for the purpose of inspection under the regulations in this part. Such a license shall bear the printed signature of the Secretary, and shall be countersigned by an authorized employee of the Department. Licensed samplers shall have no authority to inspect processed products under the regulations in this part except as to identification and condition of the containers in a lot. A licensed sampler shall perform his duties pursuant to the regulations in this part as directed by the Director.

§ 260.48 Application to become a licensed sampler.

Application to become a licensed sampler shall be made to the Secretary on forms furnished for that purpose. Each such application shall be signed by the applicant in his own handwriting, and the information contained therein shall be certified by him to be true, complete, and correct to the best of his knowledge and belief, and the application shall contain or be accompanied by:

(a) A statement showing his present and previous occupations, together with names of all employers for whom he has worked, with periods of service, during the 10 years previous to the date of his application;

(b) A statement that, in his capacity as a licensed sampler, he will not draw samples from any lot of processed products with respect to which he or his employer is an interested party;

(c) A statement that he agrees to comply with all terms and conditions of the regulations in this part relating to duties of licensed samplers; and

(d) Such other information as may be requested.

§ 260.49 Inspectors.

Inspections will ordinarily be performed by employees under the Secretary who are employed as Federal Government employees for that purpose. However, any person employed under any joint Federal-State inspection service arrangement may be licensed, if otherwise qualified, by the Secretary to make inspections in accordance with this part on such processed products as may be specified in his license. Such license shall be issued only in a case where the Secretary is satisfied that the particular person is qualified to perform adequately the inspection service for which such person is to be licensed. Each such license shall bear the printed signature of the Secretary and shall be countersigned by an authorized employee of the Department. An inspector shall perform his duties pursuant to the regulations in this part as directed by the Director.

§ 260.50 Suspension or revocation of license of licensed sampler or licensed inspector.

Pending final action by the Secretary, the Director may, whenever he deems such action necessary, suspend the license of any licensed sampler, or licensed inspector, issued pursuant to the regulations in this part, by giving notice of such suspension to the respective licensee, accompanied by a statement of the reasons therefor. Within 7 days after the receipt of the aforesaid notice and statement of reasons by such licensee, he may file an appeal, in writing, with the Secretary supported by any argument or evidence that he may wish to offer as to why his license should not be suspended or revoked. After the expiration of the aforesaid 7 day period and consideration of such argument and evidence, the Secretary shall take such action as he deems appropriate with respect to such suspension or revocation.

§ 260.51 Surrender of license.

Upon termination of his services as a licensed sampler or licensed inspector, or suspension or revocation of his license, such licensee shall surrender his license immediately to the office of inspection serving the area in which he is located. These same provisions shall apply in a case of an expired license.

SAMPLING

§ 260.57 How samples are drawn by inspectors or licensed samplers.

An inspector or a licensed sampler shall select samples, upon request, from designated lots of processed products which are so placed as to permit thorough and proper sampling in accordance with the regulations in this part. Such person shall, unless otherwise directed by the Secretary, select sample units of such products at random, and from various locations in each lot in such manner and number, not inconsistent with the regulations in this part, as to secure a representative sample of the lot. Samples drawn for inspection shall be furnished by the applicant at no cost to the Department.

§ 260.58 Accessibility for sampling.

Each applicant shall cause the processed products for which inspection is requested to be made accessible for proper sampling. Failure to make any lot accessible for proper sampling shall be sufficient cause for postponing inspection service until such time as such lot is made accessible for proper sampling.

§ 260.59 How officially drawn samples are to be identified.

Officially drawn samples shall be marked by the inspector or licensed sampler so such samples can be properly identified for inspection.

§ 260.60 How samples are to be shipped.

Unless otherwise directed by the Secretary, samples which are to be shipped to any office of inspection shall be forwarded to the office of inspection serving the area in which the processed prodcuts from which the samples were drawn is located. Such samples shall be shipped in a manner to avoid, if possible, any material change in the quality or condition of the sample of the processed product. All transportation charges in connection with such shipments of samples shall be at the expense of the applicant and wherever practicable, such charges shall be prepaid by him.

§ 260.61 Sampling plans and procedures for determining lot compliance.

(a) Except as otherwise provided for in this section in connection with in-plant inspection and unless otherwise approved by the Secretary, samples shall be selected from each lot in the exact number of sample units indicated for the lot size in the applicable single sampling plan or, at the discretion of the inspection service, any comparable multiple sampling plan: *Provided,* That at the discretion of the inspection service the number of sample units selected may be increased to the exact number of sample units indicated for any one of the larger sample sizes provided for in the appropriate plans.

(b) Under the single sampling plans with respect to any specified requirement:

(1) If the number of deviants (as defined in connection with the specific requirements) in the sample does not exceed the acceptance number prescribed for the sample size the lot meets the requirement;

(2) If the number of deviants (as defined in connection with the specific requirement) in the sample exceeds the acceptance number prescribed for the sample size the lot fails the requirement.

(c) Under the multiple sampling plans inspection commences with the smallest sample size indicated under the appropriate plan and with respect to any specified requirement:

(1) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered does not exceed the acceptance number prescribed for that sample size the lot meets the requirement;

(2) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered equals or exceeds the rejection number prescribed for that sample size the lot fails the requirement; or

(3) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered falls between the acceptance and rejection numbers of the plan, additional sample units are added to the sample so that the sample thus cumulated equals the next larger cumulative sample size in the plan. It may then be determined that the lot meets or fails the specific requirement by considering the cumulative sample and applying the procedures outlined in paragraphs (c)(1) and (2) of this section or by considering successively larger samples cumulated in the same manner until the lot meets or fails the specific requirement.

(d) If in the conduct of any type of in-plant inspection the sample is examined before the lot size is known and the number of sample units exceeds the prescribed sample size for such lot but does not equal any of the prescribed larger sample sizes the lot may be deemed to meet or fail a specific requirement in accordance with the following procedure:

(1) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample does not exceed the acceptance number of the next smaller sample size the lot meets the requirements;

(2) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample equals the acceptance number prescribed for the next larger sample size additional sample units shall be selected to increase the sample to the next larger prescribed sample size;

(3) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample exceeds the acceptance number prescribed for the next larger sample size the lot fails the requirement.

(e) In the event that the lot compliance determination provisions of a standard or specification are based on the number of specified deviations instead of deviants the procedures set forth in this section may be applied by substituting the word "deviation" for the word "deviant" wherever it appears.

(f) Sampling plans referred to in this section are those contained in Tables I, II, III, IV, V, and VI which follow or any other plans which are applicable. For processed products not included in these tables, the minimum sample size shall be the exact number of sample units prescribed in the table, container group, and lot size that, as determined by the inspector, most closely resembles the product, type, container size and amount of product to be samples.

SINGLE SAMPLING PLANS AND ACCEPTANCE LEVELS

TABLE I—CANNED OR SIMILARLY PROCESSED FISHERY PRODUCTS, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE

Container size group	Lot size (number of containers)								
GROUP 1 Any type of container of less volume than that of a No. 300 size can (300 × 407)	3,600 or less	3,601-14,400	14,401-48,000	48,001-96,000	96,001-156,000	156,001-228,000	228,001-300,000	300,001-420,000	Over 420,000
GROUP 2 Any type of container of a volume equal to or exceeding that of a No. 300 size can, but not exceeding that of a No. 3 cylinder size can (404 × 700)	2,400 or less	2,401-12,000	12,001-24,000	24,001-48,000	48,001-72,000	72,001-108,000	108,001-168,000	168,001-240,000	Over 240,000
GROUP 3 Any type of container of a volume exceeding that of a No. 3 cylinder size can, but not exceeding that of a No. 12 size can (603 × 812)	1,200 or less	1,201-7,200	7,201-15,000	15,001-24,000	24,001-36,000	36,001-60,000	60,001-84,000	84,001-120,000	Over 120,000

SINGLE SAMPLING PLANS AND ACCEPTANCE LEVELS—Continued

TABLE I—CANNED OR SIMILARLY PROCESSED FISHERY PRODUCTS, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE

Container size group	Lot size (number of containers)								
GROUP 4 Any type of container of a volume exceeding that of a No. 12 size can, but not exceeding that of a 5-gallon container	200 or less	201-800	801-1,600	1,601-2,400	2,401-3,600	3,601-8,000	8,001-16,000	16,001-28,000	Over 28,000
GROUP 5 Any type of container of a volume exceeding that of a 5-gallon container	25 or less	26-80	81-200	201-400	401-800	801-1,200	1,201-2,000	2,001-3,200	Over 3,200
	Single sampling plans[1]								
Sample size (number of sample units)[2]	3	6	13	21	29	38	48	60	72
Acceptance number	0	1	2	3	4	5	6	7	

[1] For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

[2] The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. Groups 4 and 5—approximately 2 pounds of product. When determined by the inspector that a 2-pound sample unit is inadequate, a larger sample unit may be substituted.

TABLE II—FROZEN OR SIMILARLY PROCESSED FISHERY PRODUCTS, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE

Container size group	Lot size (number of containers)								
GROUP 1 Any type of container of 1 pound or less net weight	2,400 or less	2,401-12,000	12,001-24,000	24,001-48,000	48,001-72,000	72,001-108,000	108,001-168,000	168,001-240,000	Over 240,000
GROUP 2 Any type of container over 1 pound but not over 4 pounds net weight	1,800 or less	1,801-8,400	8,401-18,000	18,001-36,000	36,001-60,000	60,001-96,000	96,001-132,000	132,001-168,000	Over 168,000
GROUP 3 Any type of container over 4 pounds but not over 10 pounds net weight	900 or less	901-3,600	3,601-10,800	10,801-18,000	18,001-36,000	36,001-60,000	60,001-84,000	84,001-120,000	Over 120,000
GROUP 4 Any type of container over 10 pounds but not over 100 pounds net weight	200 or less	201-800	801-1,600	1,601-2,400	2,401-3,600	3,601-8,000	8,001-16,000	16,001-28,000	Over 28,000
GROUP 5 Any type of container over 100 pounds net weight	25 or less	26-80	81-200	201-400	401-800	801-1,200	1,201-2,000	2,001-3,200	Over 3,200
	Single sampling plans[1]								
Sample size (number of sample units)[2]	3	6	13	21	29	38	48	60	72
Acceptance number	0	1	2	3	4	5	6	7	8

[1] For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

[2] The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. Groups 4 and 5—approximately 3 pounds of product. When determined by the inspector that a 3-pound sample unit is inadequate, a larger sample unit or 1 or more containers and their entire contents may be substituted for 1 or more sample units of 3 pounds.

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TABLE III—CANNED, FROZEN, OR OTHERWISE PROCESSED FISHERY AND RELATED PRODUCTS, AND PRODUCTS THEREOF OF A COMMINUTED, FLUID, OR HOMOGENEOUS STATE

Container size group [1]	Lot size (number of containers)								
GROUP 1 Any type of container of 12 ounces or less	5,400 or less	5,401-21,600	21,601-62,400	62,401-112,000	112,001-174,000	174,001-240,000	240,001-360,000	360,001-480,000	Over 480,000
GROUP 2 Any type of container over 12 ounces but not over 60 ounces	3,600 or less	3,601-14,400	14,401-48,000	48,001-96,000	96,001-156,000	156,001-228,000	228,001-300,000	300,001-420,000	Over 420,000
GROUP 3 Any type of container over 60 ounces but not over 160 ounces	1,800 or less	1,801-8,400	8,401-18,000	18,001-60,000	36,001-60,000	60,001-96,000	96,001-132,000	132,001-168,000	Over 168,000
GROUP 4 Any type of container over 160 ounces but not over 10 gallons or 100 pounds whichever is applicable	200 or less	201-800	801-1,600	1,601-3,200	3,201-8,000	8,001-16,000	16,001-24,000	24,001-32,000	Over 32,000
GROUP 5 Any type of container over 10 gallons or 100 pounds whichever is applicable	25 or less	26-80	81-200	201-400	401-800	801-1,200	1,201-2,000	2,001-3,200	Over 3,200

Single sampling plans[2]

Sample size (number of sample units)[3]	3	6	13	21	29	38	48	60	72
Acceptance number	0	1	2	3	4	5	6	7	8

[1] Ounces pertain to either fluid ounces of volume or avoirdupois ounces of net weight whichever is applicable for the product involved.

[2] For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

[3] The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. A smaller sample unit may be substituted in group 3 at the inspector's discretion. Groups 4, 5, and 6—approximately 16 ounces of product. When determined by the inspector that a 16-ounce sample unit is inadequate, a larger sample unit may be substituted.

TABLE IV—DEHYDRATED FISHERY AND RELATED PRODUCTS

Container size group	Lot size (number of containers)								
GROUP 1 Any type of container of 1 pound or less net weight	1,600 or less	1,601-6,400	6,401-18,000	18,001-36,000	36,001-60,000	60,001-96,000	96,001-132,000	132,001-168,000	Over 168,000
GROUP 2 Any type of container over 1 pound but not over 6 pounds net weight	900 or less	901-3,600	3,601-10,800	10,801-18,000	18,001-36,000	36,001-60,000	60,001-84,000	84,001-120,000	Over 120,000
GROUP 3 Any type of container over 6 pounds but not over 20 pounds net weight	200 or less	201-800	801-1,600	1,601-3,200	3,201-8,000	8,001-16,000	16,001-24,000	24,001-32,000	Over 32,000
GROUP 4 Any type of container over 20 pounds but not over 100 pounds net weight	48 or less	49-400	401-1,200	1,201-2,000	2,001-2,800	2,801-6,000	6,001-9,600	9,601-15,000	Over 15,000

TABLE IV—DEHYDRATED FISHERY AND RELATED PRODUCTS—Continued

Container size group	Lot size (number of containers)								
GROUP 5 Any type of container over 100 pounds net weight	16 or less	17-80	81-200	201-400	401-800	801-1,200	1,201-2,000	2,001-3,200	Over 3,200
Single sampling plans [1]									
Sample size (number of sample units) [2]	3	6	13	21	29	38	48	60	72
Acceptance number	0	1	2	3	4	5	6	7	8

[1] For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

[2] The sample units for the various container size groups are as follows: Group 1—1 container and its entire contents. Groups 2, 3, 4, and 5—1 container and its entire contents or a smaller sample unit when determined by the inspector to be adequate.

TABLE V—SINGLE SAMPLING PLANS FOR USE IN INCREASING SAMPLE SIZE BEYOND 72 SAMPLE UNITS

Sample size, *n*	84	96	108	120	132	144	156	168	180	192	204	216	230	244	258	272	286	300	314	328	342	356	370	384	400
Acceptance numbers, *c*	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33

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MULTIPLE SAMPLING PLANS [1]

TABLE VI—MULTIPLE SAMPLING PLANS COMPARABLE TO THE INDICATED SINGLE SAMPLING PLANS

Indicated single sampling plan: Single sample size, *n*	6			13			21			29			38			48			60			72		
Acceptance numbers, *c*	1			2			3			4			5			6			7			8		
Cumulative sample sizes, n_k, and acceptance numbers, *c*, and rejection numbers, *r*, for multiple sampling.	n_k	*c*	*r*	n_k	*c*	*r*	n_k	*c*	*r*	n_k	*c*	*r*	n_k	*c*	*r*	n_k	*c*	*r*	n_k	*c*	*r*	n_k	*c*	*r*
	4	0	2	8	0	3	10	0	3	12	0	4	14	0	4	16	0	4	18	0	5	22	0	5
	6	0	2	10	0	3	14	1	4	16	0	4	20	0	5	24	1	5	28	1	6	32	1	7
	8	1	2	12	1	3	18	1	4	20	1	5	26	1	6	32	2	6	38	2	7	42	2	8
				14	2	3	22	2	5	24	2	5	32	2	6	40	3	8	48	3	8	52	3	9
							26	4	5	28	3	6	38	3	7	48	4	8	58	4	8	62	5	10
										32	3	6	44	6	7	56	7	8	68	8	9	72	6	10
										36	5	6										82	9	10

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[1] These multiple sampling plans may be used in lieu of the single sampling plans listed at the heading of each column.

§ 260.62 Issuance of certificate of sampling.

Each inspector and each licensed sampler shall prepare and sign a certificate of sampling to cover the samples drawn by the respective person, except that an inspector who inspects the samples which he has drawn need not prepare a certificate of sampling. One copy of each certificate of sampling prepared shall be retained by the inspector or licensed sampler (as the case may be) and the original and all other copies thereof shall be disposed of in accordance with the instructions of the Secretary.

§ 260.63 Identification of lots sampled.

Each lot from which officially drawn samples are selected shall be marked in such manner as may be prescribed by the Secretary, if such lots do not otherwise possess suitable identification.

FEES AND CHARGES

§ 260.69 Payment fees and charges.

Fees and charges for any inspection service shall be paid by the interested party making the application for such service, in accordance with the applicable provisions of the regulations in this part, and, if so required by the person in charge of the office of inspection serving the area where the services are to be performed, an advance of funds prior to rendering inspection service in an amount suitable to the Secretary, or a surety bond suitable to the Secretary, may be required as a guarantee of payment for the services rendered. All fees and charges for any inspection service, performed pursuant to the regulations in this part shall be paid by check, draft, or money order made payable to the National Marine Fisheries Service. Such check, draft, or money order shall be remitted to the appropriate regional or area office serving the geographical area in which the services are performed, within ten (10) days from the date of billing, unless otherwise specified in a contract between the applicant and the Secretary, in which latter event the contract provisions shall apply.

[36 FR 21038, Nov. 3, 1971]

§ 260.70 Schedule of fees.

(a) Unless otherwise provided in a written agreement between the applicant and the Secretary, the fees to be charged and collected for any inspection service performed under the regulations in this part at the request of the United States, or any other agency or instrumentality thereof, shall be in accordance with the applicable provisions of this section and § 260.81.

(b)(1) Type I—Official establishment and product inspection—contract basis:

	Per hour
Regular time	$20.80
Overtime	28.45
Sunday and legal holidays (2 h minimum)	35.15

The contracting party shall be charged at an hourly rate of $20.80 per hour for regular time; $28.45 per hour for overtime in excess of 8 hours per shift per day; and $35.15 per hour for Sunday and national legal holidays for service performed by inspectors at official establishment(s) operating under Federal inspection. The contracting party shall be billed monthly for services rendered in accordance with contractual provisions at the rates prescribed in this section. At an official establishment designated in a contract, products also designated therein will be inspected during processing at the hourly rate for regular time, plus overtime, when appropriate. Products not designated in the contract will be inspected upon request on a lot inspection basis at lot inspection rates as prescribed in this section.

(2) Type II—Lot inspection—Official and unofficially drawn samples:

	Per hour
Regular time	$30.55
Overtime	41.90
Sunday and legal holidays (2 h minimum)	53.80
Minimum fee	24.85

(i) For lot inspection services performed between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, $30.55 per hour.

(ii) For lot inspection services performed at times Monday through Friday other than 7:00 a.m. to 5:00 p.m. and on Saturdays (2 hr. minimum) $41.90 per hour. Sunday and national legal holidays (2 hr. minimum) $53.80 per hour. The minimum service fee to be charged and collected for inspection of any lot or lots of products requiring less than 1 hour shall be $24.85.

(3) Type III—Miscellaneous inspection and consultative services.

(i) When any inspection or related service, such as but not limited to, initial and final establishment surveys, appeal inspections, sanitation evaluation, SIFE inspections, sampling product evaluation, and label and product specification review, rendered is such that charges based on the foregoing sections are clearly inapplicable, charges will be based on the rates set forth below:

	Per hour
Regular time	$26.05
Overtime	34.25
Sunday and legal holidays (2 h minimum)	43.90
Minimum fee	19.65

(ii) For miscellaneous inspection and consultative services performed between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday—$26.05; for miscellaneous inspection and consultative services performed at times Monday through Friday other than 7:00 a.m. to 5:00 p.m. and on Saturdays (2 hr. minimum)—$34.25 per hour.

(iii) For miscellaneous inspection and consultative services performed on Sunday and national holidays (2 hr. minimum)—$43.90 per hour. The minimum service fee to be charged and collected for miscellaneous inspection and consultative services requiring less than 1 hour shall be $19.65.

(c) Fees to be charged and collected for lot, miscellaneous, and consultative inspection service furnished on an hourly basis shall be based on the actual time required to render such service including, but not limited to, the travel, sampling, and waiting time required of the inspector or inspectors, in connection therewith.

(d) Analytical services: Fees for various laboratory analyses are set forth below.

Type of analysis	Fee per individual analysis
Hydrogen Ion Concentration	$2.85
Moisture (drying method)	4.60
Fat	6.90
Protein	17.10
Salt	11.50
Bacteriological plate count	4.60
Bacteriological direct count	4.60
E. coli (presumptive)	6.90
Yeast and mold count	4.60
Staphylococcus	13.80
Salmonella: [1]	
Step 1	9.20
Step 2	4.60
Step 3	9.20
Coliform	4.60
Species determination	35.00

[1] Salmonella test may be in three steps as follows: Step 1—growth through differential agars; Step 2—growth and testing through triple-sugar-iron agar; Step 3—confirmatory test through biochemicals.

(1) Applicants requesting specific analysis will be charged on the basis of these fees. Charges based on these fees will be in addition to any hourly rates charged to applicants for lot miscellaneous and consultative inspection service as well as to any hourly rates charged for inspection services provided under a contract at official establishments.

(2) Fees to be charged for any analysis performed at a government laboratory not specifically shown in this paragraph (d) will be based on the time required to perform such analyses at an hourly rate of $16.15.

(3) A surcharge of 20 percent of the total charges for analytical services will be charged for administrative purposes.

[36 FR 21038, Nov. 3, 1971, as amended at 46 FR 13221, Feb. 20, 1981]

§ 260.71 Fee for inauguration of inspection service on a contract basis.

Prior to inauguration of inspection service, a fee of $25.00 per contract hour of inspection service will be charged and collected following completion of the final establishment survey and approval of it as an official establishment. The number of hours to which the fee for inauguration applies is the minimum number of man-hours of inspection per week determined in accordance with § 260.97(a).

[41 FR 2395, Jan. 16, 1976; 41 FR 25015, June 22, 1976]

§ 260.72 Fees for inspection service performed under cooperative agreement.

The fees to be charged and collected for any inspection or similar service performed under cooperative agreement shall be those provided for by such agreement.

§ 260.73 Disposition of fees for inspections made under cooperative agreement.

Fees for inspection under a cooperative agreement with any State or person shall be disposed of in accordance with the terms of such agreement. Such portion of the fees collected under a cooperative agreement as may be due the United States shall be remitted in accordance with § 260.69.

§ 260.74 Fee for appeal inspection.

The fee to be charged for an appeal inspection shall be at the rates prescribed in this part for other inspection services: *Provided*, That, if the result of any appeal inspection made for any applicant, other than the United States or any agency or instrumentality thereof, discloses that a material error was made in the inspection on which the appeal is made, no inspection fee shall be assessed.

§ 260.76 [Reserved]

§ 260.77 Fees for score sheets.

If the applicant for inspection service requests score sheets showing in detail the inspection of each container or sample inspected and listed thereon, such score sheets may be furnished by the inspector in charge of the office of inspection serving the area where the inspection was performed; and such applicant shall be changed at the rate of $2.75 for each 12 sampled units, or fraction thereof, inspected and listed on such score sheets.

§ 260.78 Fees for additional copies of inspection certificates.

Additional copies of any inspection certificate other than those provided for in § 260.29, may be supplied to any interested party upon payment of a fee of $2.75 for each set of five (5) or fewer copies.

§ 260.79 Travel and other expenses.

Charges may be made to cover the cost of travel and other expenses incurred in connection with the performance of any inspection service, including appeal inspections: *Provided*, That, if charges for sampling or inspection are based on an hourly rate, an additional hourly charge may be made for travel time including time spent waiting for transportation as well as time spent traveling, but not to exceed 8 hours of travel time for any one person for any one day: *And provided further*, That, if travel is by common carrier, no hourly charge may be made for travel time outside the employee's official work hours.

§ 260.80 Charges for inspection service on a contract basis.

Irrespective of fees and charges prescribed in the foregoing sections, the Secretary may enter into a written memorandum of understanding or contract, whichever may be appropriate, with any administrative agency charged with the administration of a marketing order effective pursuant to the Agricultural Marketing Agreement Act of 1937, as revised (16 U.S.C. 661 et seq.) for the making of inspections pursuant to said agreement or order on such basis as will reimburse the National Marine Fisheries Service of the Department for the full cost of rendering such inspection service as may be determined by the Secretary. Likewise, the Secretary may enter into a written memorandum of understanding or contract, whichever may be appropriate, with an administrative agency charged with the administration of a similar program operated pursuant to the laws of any State.

[36 FR 21038, Nov. 3, 1971]

§ 260.81 Readjustment and increase in hourly rates of fees.

(a) When Federal pay act increases occur, the hourly rates for inspection fees will automatically be increased on the effective date of the pay act by an amount equal to the increase received by the average GS grade level of fishery product inspectors receiving such pay increases.

(b) The hourly rates of fees to be charged for inspection services will be subject to review and reevaluation for possible readjustment not less than every 3 years: *Provided*, That, the hourly rates of fees to be charged for inspection services will be immediately reevaluated as to need for readjustment with each Federal pay act increase.

[35 FR 15925, Oct. 9, 1970]

MISCELLANEOUS

§ 260.86 Approved identification.

(a) *Grade marks:* The approved grade mark or identification may be used on containers, labels, or otherwise indicated for any processed product that: (1) Has been packed under inspection as provided in this part to assure compliance with the requirements for wholesomeness established for the raw product and of sanitation established for the preparation and processing operations, and (2) has been certified by an inspector as meeting the requirements of such grade, quality or classification. The grade marks approved for use shall be similar in form and design to the examples of Figures 1 to 5 of this section.

Shield using red, white, and blue background or other colors appropriate for label.

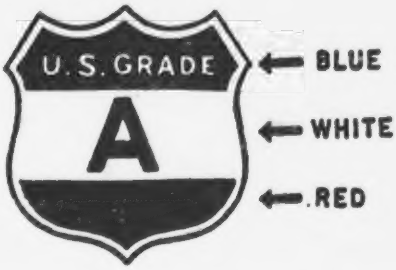

FIGURE 1.

Shield with plain background.

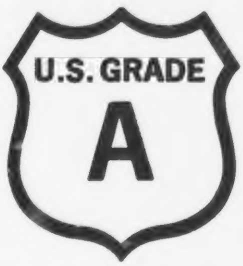

FIGURE 2.

U.S. GRADE A

FIGURE 3.

U.S.
GRADE
B

FIGURE 4.

U.S.
GRADE
C

FIGURE 5.

(b) *Inspection marks:* The approved inspection marks may be used on containers, labels, or otherwise indicated for any processed product that: (1) Has been packed under inspection as provided in this part to assure compliance with the requirements for wholesomeness established for the raw product and of sanitation established for the preparation and processing operations, and (2) has been certified by an inspector as meeting the requirements of such quality or grade classification as may be approved by the Secretary.

The inspection marks approved for use shall be similar in form and design to the examples in Figures 6, 7, and 8 of this section.

Statement enclosed within a circle.

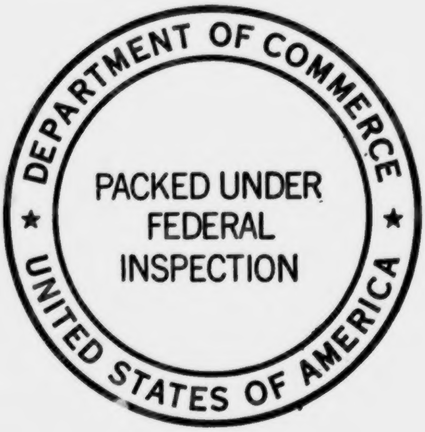

FIGURE 6.

Statement without the use of the circle.

PACKED UNDER
FEDERAL
INSPECTION

U.S. DEPARTMENT
OF COMMERCE

FIGURE 7.

Statement without the use of the circle.

PACKED BY

UNDER FEDERAL INSPECTION
U.S. DEPT. OF COMMERCE

FIGURE 8.

(c) *Combined grade and inspection marks:* The grade marks set forth in paragraph (a) of this section, and the inspection marks, Figures 7 and 8, set forth in paragraph (b) of this section, may be combined into a consolidated grade and inspection mark for use on processed products that have been packed under inspection as provided in this part.

(d) *Products not eligible for approved identification:* Processed products which have not been packed under inspection as provided in this part shall not be identified by approved grade or inspection marks, but such products may be inspected on a lot inspection basis as provided in this part and identified by an authorized representative of the Department by stamping the shipping cases and inspection certificate(s) covering such lot(s) as appropriate, with marks similar in form and design to the examples in Figures 9 and 10 of this section.

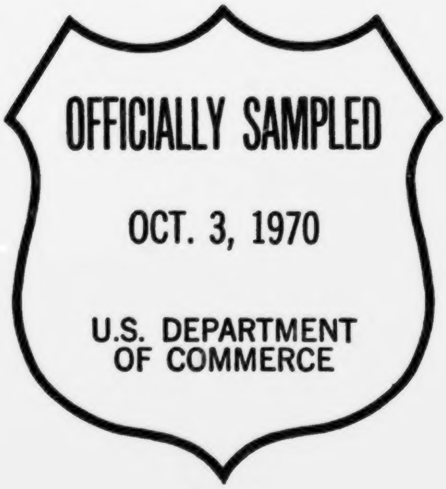

FIGURE 9.

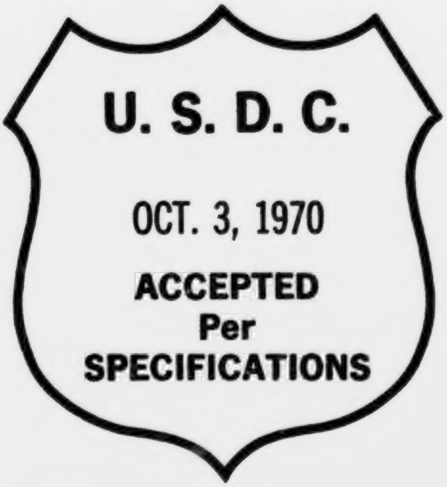

FIGURE 10.

(e) *Removal of labels bearing inspection marks:* At the time a lot of fishery products is found to be mislabeled and the labels on the packages are not removed within ten (10) consecutive calendar days, the following procedure shall be applicable:

(1) The processor, under the supervision of the inspector, shall clearly and conspicuously mark all master cases in the lot by means of a "rejected by USDC Inspector" stamp provided by the Department.

(2) The processor shall be held accountable to the Department for all mislabeled products until the products are properly labeled.

(3) Clearance for the release of the relabeled products shall be obtained by the processor from the inspector.

(f) Users of inspection services having an inventory of labels which bear official approved identification marks stating "U.S. Department of the Interior" or otherwise referencing the Interior Department, will be permitted to use such marks until December 31, 1971, except that upon written request the Director, National Marine Fisheries Service, may extend such period for the use of specific labels.

[36 FR 4609, Mar. 10, 1971]

§ 260.88 Political activity.

All inspectors and licensed samplers are forbidden, during the period of their respective appointments or licenses, to take an active part in political management or in political campaigns. Political activities in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, are prohibited. This applies to all appointees or licensees, including, but not limited to, temporary and cooperative employees and employees on leave of absence with or without pay. Wilful violation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

§ 260.90 Compliance with other laws.

None of the requirements in the regulations in this part shall excuse failure to comply with any Federal, State, county, or municipal laws applicable to the operation of food processing establishments and to processed food products.

§ 260.91 Identification.

Each inspector and licensed sampler shall have in his possession at all times and present upon request, while on duty, the means of identification furnished by the Department to such person.

§ 260.93 Debarment and suspension.

(a) *Debarment.* Any person may be debarred from using or benefiting from the inspection service provided under the regulations of this subchapter or under the terms of any inspection contract, and such debarment may apply to one or more plants under his control, if such person engages in one or more of the following acts or activities:

(1) Misrepresenting, misstating, or withholding any material or relevant facts or information in conjunction with any application or request for an inspection contract, inspection service, inspection appeal, lot inspection, or other service provided for under the regulations of this subchapter.

(2) Using on a processed product any label which displays any official identification, official device, or official mark, when the label is not currently approved for use by the Director or his delegate.

(3) Using on a processed product any label which displays the words "Packed Under Federal Inspection, U.S. Department of Commerce", or which displays any official mark, official device, or official identification, or which displays a facsimile of the foregoing, when such product has not been inspected under the regulations of this subchapter.

(4) Making any statement or reference to the U.S. Grade of any processed product or any inspection service provided under the regulations of this subchapter on the label or in the advertising of any processed product, when such product has not been inspected under the regulations of this subchapter.

(5) Making, using, issuing or attempting to issue or use in conjunction with the sale, shipment, transfer or advertisement of a processed product any certificate of loading, certificate of sampling, inspection certificate, official device, official identification, official mark, official document, or score sheet which has not been issued, approved, or authorized for use with such product by an inspector.

(6) Using any of the terms "United States", "Officially graded", "Officially inspected", "Government inspected," "Federally inspected", "Officially sampled", or words of similar import or meanings, or using any official device, official identification, or official mark on the label, on the shipping container, or in the advertising of any processed product, when such product has not been inspected under the regulations of this subchapter.

(7) Using, attempting to use, altering or reproducing any certificate, certificate form, design, insignia, mark, shield, device, or figure which simulates in whole or in part any official mark, official device, official identification, certificate of loading, certificate of sampling, inspection certificate or other official certificate issued pursuant to the regulations of this subchapter.

(8) Assaulting, harassing, interfering, obstructing or attempting to interfere or obstruct any inspector or sampler in the performance of his duties under the regulations of this subchapter.

(9) Violating any one or more of the terms of any inspection contract or the provisions of the regulations of this subchapter.

(10) Engaging in acts or activities which destroy or interfere with the purposes of the inspection program or which have the effect of undermining the integrity of the inspection program.

(b) *Temporary suspension.* (1) Whenever the Director has reasonable cause to believe that any person has engaged in any act or activity described in paragraph (a) of this section, and in such act or activity, in the judgment of the Director, would cause serious and irreparable injury to the inspection program and services provided under the regulations of this subchapter, the Director may, without a hearing, temporarily suspend, either before or after the institution of a debarment hearing, the inspection service provided under the regulations of this subchapter or under any inspection contract for one or more plants under the control of such person. Notice of suspension shall be served by registered or certified mail, return receipt requested, and the notice shall specifically state those acts or activities of such person which are the bases for the suspension. The suspension shall become effective five (5) days after receipt of the notice.

(2) Once a person has received a notice of a temporary suspension, a debarment hearing will be set for 30 days after the effective date of the suspension. Within 60 days after the completion of the debarment hearing, the Hearing Examiner shall determine, based upon evidence of record, whether the temporary suspension shall be continued or terminated. A temporary suspension shall be terminated by the Hearing Examiner if he determines that the acts or activities, which were the bases for the suspension, did not occur or will not cause serious and irreparable injury to the inspection program and services provided under the regulations of this subchapter. This determination of the Hearing Examiner on the continuation or termination of the temporary suspension shall be final and there shall be no appeal of this determination. The initial decision by the Hearing Examiner on the debarment shall be made in accordance with paragraph (b)(1), *Decisions,* of this section.

(3) After a debarment hearing has been instituted against any person by a suspension, such suspension will remain in effect until a final decision is rendered on the debarment in accordance with the regulations of this section or the temporary suspension is terminated by the Hearing Examiner.

(4) When a debarment hearing has been instituted against any person not under suspension, the Director may, in accordance with the regulations of this paragraph (b) temporarily suspend such person, and the suspension will remain in effect until a final decision on the debarment is rendered in accordance with the regulations of this section or the temporary suspension is terminated by the Hearing Examiner.

(c) *Hearing Examiner.* All hearing shall be held before a Hearing Examiner appointed by the Secretary or the Director.

(d) *Hearing.* If one or more of the acts or activities described in paragraph (a) of this section have occurred, the Director may institute a hearing to determine the length of time during which the person shall be debarred and those plants to which the debarment shall apply. No person may be debarred unless there is a hearing, as prescribed in this section, and it has been determined by the Hearing Examiner, based on evidence of record, that the one or more of the activities described in paragraph (a) of this section have occurred. Any debarment or suspension must be instituted within two (2) years of the time when such acts or activities described in paragraph (a) of this section have occurred.

(e) *Notice of hearing.* The Director shall notify such person of the debarment hearing by registered or certified mail, return receipt requested. The notice shall set forth the time and place of the hearing, the specific acts or activities which are the basis for the debarment hearing, the time period of debarment being sought, and those plants to which the debarment shall apply. Except for the debarment hearing provided for in paragraph (b) of this section the hearing will be set for a time not longer than 120 days after receipt of the notice of hearing.

(f) *Time and place of hearing.* The hearing shall be held at a time and place fixed by the Director: *Provided, however,* The Hearing Examiner may, upon a proper showing of inconvenience, change the time and place of the hearing. Motions for change of time or place of the hearing must be mailed to or served upon the Hearing Examiner no later than 10 days before the hearing.

(g) *Right to counsel.* In all proceedings under this section, all persons and the Department of Commerce shall have the right to be represented by counsel, in accordance with the rules and regulations set forth in Title 43, Code of Federal Regulations, Part 1.

(h) *Form, execution, and service of documents.* (1) All papers to be filed under the regulations in this section shall be clear and legible; and shall be dated, signed in ink, contain the docket description and title of the proceeding, if any, and the address of the signatory. Five copies of all papers are required to be filed. Documents filed shall be executed by: (i) The person or persons filing same, (ii) by an authorized officer thereof if it be a corporation or, (iii) by an attorney or other person having authority with respect thereto.

(2) All documents, when filed, shall show that service has been made upon all parties to the proceeding. Such service shall be made by delivering one copy to each party in person or by mailing by first-class mail, properly addressed with postage prepaid. When a party has appeared by attorney or other representative, service on such attorney or other representative will be deemed service upon the party. The date of service of document shall be the day when the matter served is deposited in the U.S. mail, shown by the postmark thereon, or is delivered in person, as the case may be.

(3) A person is deemed to have appeared in a hearing by the filing with the Director a written notice of his appearance or his authority in writing to appear on behalf of one of the persons to the hearing.

(4) The original of every document filed under this section and required to be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

> I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by: (1) Mailing postage prepaid, (2) delivering in person, a copy to each party.
>
> Dated at ——— this ——— day of ———, 19—
>
> Signature —————

(i) *Procedures and evidence.* (1) All parties to a hearing shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the Hearing Examiner at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this section, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary.

(j) *Duties of Hearing Examiner.* The Hearing Examiner shall have the authority and duty to:

(1) Take or cause depositions to be taken.

(2) Regulate the course of the hearings.

(3) Prescribe the order in which evidence shall be presented.

(4) Dispose of procedural requests or similar matters.

(5) Hear and initially rule upon all motions and petitions before him.

(6) Administer oaths and affirmations.

(7) Rule upon offers of proof and receive competent, relevant, material, reliable, and probative evidence.

(8) Control the admission of irrelevant, immaterial, incompetent, unreliable, repetitious, or cumulative evidence.

(9) Hear oral arguments if the Hearing Examiner determined such requirement is necessary.

(10) Fix the time for filing briefs, motions, and other documents to be filed in connection with hearings.

(11) Issue the initial decision and dispose of any other pertinent matters that normally and properly arise in the course of proceedings.

(12) Do all other things necessary for an orderly and impartial hearing.

(k) *The record.* (1) The Director will designate an official reporter for all hearings. The official transcript of testimony taken, together with any exhibits and briefs filed therewith, shall be filed with the Director. Transcripts of testimony will be available in any proceeding under the regulations of this section, at rates fixed by the contract between the United States of America and the reporter. If the reporter is an employee of the Department of Commerce, the rate will be fixed by the Director.

(2) The transcript of testimony and exhibits, together with all briefs, papers, and all rulings by the Hearing Examiner shall constitute the record. The initial decision will be predicated on the same record, as will be final decision.

(l) *Decisions.* (1) The Hearing Examiner shall render the initial decision in all debarment proceedings before him. The same Hearing Examiner who presides at the hearing shall render the initial decision except when such Examiner becomes unavailable to the Department of Commerce. In such case, another Hearing Examiner will be designated by the Secretary or Director to render the initial decision. Briefs, or other documents, to be submitted after the hearing must be received not later than twenty (20) days after the hearing, unless otherwise extended by the Hearing Examiner upon motion by a party. The initial decision shall be made within sixty (60) days after the receipt of all briefs. If no appeals from the initial decision is served upon the Director within ten (10) days of the date of the initial decision, it will become the final decision on the 20th day following the date of the initial decision. If an appeal is received, the appeal will be transmitted to the Secretary who will render the final decision after considering the record and the appeal.

(2) All initial and final decisions shall include a statement of findings and conclusions, as well as the reasons or bases therefore, upon the material issues presented. A copy of each decision shall be served on the parties to the proceeding, and furnished to interested persons upon request.

(3) It shall be the duty of the Hearing Examiner, and the Secretary where there is an appeal, to determine whether the person has engaged in one or more of the acts or activities described in paragraph (a) of this section, and, if there is a finding that the person has engaged in such acts or activities, the length of time the person shall be debarred, and the plants to which the debarment shall apply.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 18738, Sept. 21, 1971]

REQUIREMENTS FOR PLANTS OPERATING UNDER CONTINUOUS INSPECTION ON A CONTRACT BASIS[1]

§ 260.96 Application for Fishery Products Inspection Service on a contract basis at official establishments.

Any person desiring to process and pack products in an establishment under fishery products inspection service on a contract basis, must receive approval of such buildings and facilities as an official establishment prior to the inauguration of such service. An application for inspection service to be rendered in an establishment shall be approved according to the following procedure:

(a) Initial survey: When application has been filed for inspection service as aforesaid, NMFS inspector(s) shall examine the buildings, premises, and facilities according to the requirements of the fishery products inspection service and shall specify any additional facilities required for the service.

(b) Final survey and establishment approval: Prior to the inauguration of the fishery products inspection service, a final survey of the buildings, premises, and facilities shall be made to verify that the buildings are constructed and facilities are in accordance with the approved drawings and the regulations in this part.

(c) Drawings and specifications of new construction or proposed alterations of existing official establishments shall be furnished to the Director in advance of actual construction for prior approval with regard to compliance with requirements for facilities.

[36 FR 21039, Nov. 3, 1971]

§ 260.97 Conditions for providing fishery products inspection service at official establishments.

(a) The determination as to the inspection effort required to adequately provide inspection service at any establishment will be made by NMFS. The man-hours required may vary at different official establishments due to factors such as, but not limited to, size and complexity of operations, volume and variety of products produced, and adequacy of control systems and cooperation. The inspection effort requirement may be reevaluated when the contracting party or NMFS deems there is sufficient change in production, equipment and change of quality control input to warrant reevaluation. Inspectors will not be available to perform any of employee or management duties, however, they will be available for consultation purposes. NMFS reserves the right to reassign inspectors as it deems necessary.

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[1] Compliance with the above requirements does not excuse failure to comply with all applicable sanitary rules and regulations of city, county, State, Federal, or other agencies having jursidiction over such establishments and operations.

(b) NMFS shall not be held responsible:

(1) For damages occurring through any act of commission or omission on the part of its inspectors when engaged in performing services; or

(2) For production errors, such as processing temperatures, length of process, or misbranding of products; or

(3) For failure to supply enough inspection effort during any period of service.

(c) The contracting party will:

(1) Use only wholesome raw material which has been handled or stored under sanitary conditions and is suitable for processings; maintain the official establishment(s), designated on the contract in such sanitary condition and to employ such methods of handling raw materials for processing as may be necessary to conform to the sanitary requirements precribed or approved by NMFS;

(2) Adequately code each primary container and master case of products sold or otherwise distributed from a manufacturing, processing, packing, or repackaging activity to enable positive lot identification to facilitate, where necessary, the segregation of specific food lots that may have become contaminated or otherwise unfit for their intended use;

(3) Not permit any labels on which reference is made to Federal inspection, to be used on any product which is not packed under fishery products inspection service nor permit any labels on which reference is made to any U.S. Grade to be used on any product which has not been officially certified as meeting the requirements of such grade; nor supply labels bearing reference to Federal inspection to another establishment unless the products to which such labels are to be applied have been packed under Federal inspection at an official establishment;

(4) Not affix any label on which reference is made to Federal inspection to any container of processed foods, produced in any designated official establishment, with respect to which the grade of such product is not certified because of adulteration due to the presence of contaminants in excess of limits established in accordance with the regulations or guidelines issued pursuant to the Food, Drug, and Cosmetic Act, as amended;

(5) Not, with respect to any product for which U.S. Grade Standards are in effect, affix any label on which reference is made to Federal inspection to any container of processed food which is substandard: *Provided*, That such label may be affixed to any container of such substandard quality product if such label bears a statement to indicate the substandard quality;

(6) Not, with respect to any product for which U.S. Grade Standard are not in effect, affix any label on which reference is made to the Federal inspection to containers of processed foods, except with the approval of NMFS;

(7) Furnish such reports of processing, packaging, grading, laboratory analyses, and output of products inspected, processed, and packaged at the designated official establishment(s) as may be requested by NMFS, subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942;

(8) Make available for use by inspectors, adequate office space in the designated official establishment(s) and furnish suitable desks, office equipment, and files for the proper care and storage of inspection records;

(9) Make laboratory facilities and necessary equipment available for the use of inspectors to inspect samples of processed foods and/or components thereof;

(10) Furnish and provide laundry service, as required by NMFS, for coats, trousers, smocks, and towels used by inspectors during performance of duty in official establishment(s);

(11) Furnish stenographic and clerical assistance as may be necessary in the typing of certificates and reports and the handling of official corre-

spondence, as well as furnish the labor incident to the drawing and grading of samples and other work required to facilitate adequate inspection procedures whenever necessary;

(12) Submit to NMFS, three (3) copies of new product specifications in a manner prescribed by NMFS, and three (3) end-product samples for evaluation and/or laboratory analysis on all products for approval, for which U.S. Grade Standards are not available, when inspection is to be applied to such products. If requested of NMFS, such new specifications and end-product samples shall be considered confidential;

(13) Submit, as required by NMFS, for approval, proofs prior to printing and thereafter four (4) copies of any finished label which may or may not bear official identification marks, when such products are packed under federal inspection on a contract basis;

(14) Not make deceptive, fraudulent, or unauthorized use in advertising, or otherwise, of the fishery products inspection service, the inspection certificates or reports issued, or the containers on which official identification marks are embossed or otherwise identified, in connection with the sale of any processed products;

(15) Submit to NMFS, four (4) copies of each label which may or may not bear official identification marks, when such labels are to be withdrawn from inspection or when approved labels are disapproved for further use under inspection;

(16) Notify NMFS in advance of the proposed use of any labels which require obliteration of any official identification marks, and all reference to the inspection service on approved labels which have been withdrawn or disapproved for use;

(17) Accord representatives of NMFS at all reasonable times free and immediate access to establishment(s) and official establishment(s) under applicant's control for the purpose of checking codes, coded products, coding devices, coding procedures, official identification marks obliteration, and use of withdrawn or disapproved labels.

(d) Termination of inspection services:

(1) The fishery products inspection service, including the issuance of inspection reports, shall be rendered from the date of the commencement specified in the contract and continue until suspended or terminated: (i) By mutual consent; (ii) by either party giving the other party sixty (60) days' written notice specifying the date of suspension or termination; (iii) by one (1) day's written notice by NMFS in the event the applicant fails to honor any invoice within ten (10) days after date of receipt of such invoice covering the full costs of the inspection service provided, or in the event the applicant fails to maintain its designated plants in a sanitary condition or to use wholesome raw materials for processing as required by NMFS, or in the event the applicant fails to comply with any provisions of the regulations contained in this part, (iv) by automatic termination in case of bankruptcy, closing out of business, or change in controlling ownership.

(2) In case the contracting party wishes to terminate the fishery products inspection service under the terms of paragraph (d)(1)(i) or (ii) of this section, either the service must be continued until all unused containers, labels, and advertising material on hand or in possession of his supplier bearing official identification marks, or reference to fishery products inspection service have been used, or said containers, labels, and advertising material must be destroyed, or official identification marks, and all other reference to the fishery products inspection service on said containers, labels, advertising material must be obliterated, or assurance satisfactory to NMFS must be furnished that such containers, labels, and advertising material will not be used in violation of any of the provisions of the regulations in the part.

(3) In case the fishery products inspection service is terminated for cause by NMFS under the terms of paragraph (d)(1)(iii) of this section, or in case of automatic termination under terms of paragraph (d)(1)(iv) of this section, the contracting party must destroy all unused containers, labels, and advertising material on hand bearing official identification

marks, or reference to fishery products inspection service, or must obliterate official identification marks, and all reference to the fishery products inspection service on said containers, labels and advertising material.

After termination of the fishery products inspection service, NMFS may, at such time or times as it may determine to be necessary, during regular business hours, enter the establishment(s) or other facilities in order to ascertain that the containers, labels, and advertising material have been altered or disposed of in the manner provided herein, to the satisfaction of NMFS.

[36 FR 21039, Nov. 3, 1971]

§ 260.98 Premises.

The premises about an official establishment shall be free from conditions which may result in the contamination of food including, but not limited to, the following:

(a) Strong offensive odors;

(b) Improperly stored equipment, litter, waste, refuse, and uncut weeds or grass within the immediate vicinity of the buildings or structures that may constitute an attractant, breeding place, or harborage for rodents, insects, and other pests;

(c) Excessively dusty roads, yards, or parking lots that may constitute a source of contamination in areas where food is exposed;

(d) Inadequately drained areas that may contribute contamination to food products through seepage or footborne filth and by providing a breeding place for insects or micro-organisms;

If the grounds of an official establishment are bordered by grounds not under the official establishment operator's control of the kind described in paragraphs (b) through (d) of this section, care must be exercised in the official establishment by inspection, extermination, or other means to effect exclusion of pests, dirt, and other filth that may be a source of food contamination.

[36 FR 21040, Nov. 3, 1971]

§ 260.99 Buildings and structures.

The buildings and structures shall be properly constructed and maintained in a sanitary condition, including, but not limited to the following requirements:

(a) *Lighting.* There shall be sufficient light (1) consistent with the use to which the particular portion of the building is devoted, and (2) to provide for efficient cleaning. Belts and tables on which picking, sorting, or trimming operations are carried on shall be provided with sufficient nonglaring light to insure adequacy of the respective operation. Light bulbs, fixtures, skylights, or other glass suspended over exposed food in any step of preparation shall be of the safety type or otherwise protected to prevent food contamination in case of breakage.

(b) *Ventilation.* There shall be sufficient ventilation in each room and compartment thereof to prevent excessive condensation of moisture and to insure sanitary and suitable processing and operating conditions. If such ventilation does not prevent excessive condensation, the Director may require that suitable facilities be provided to prevent the condensate from coming in contact with equipment used in processing operations and with any ingredient used in the manufacture or production of a processed product.

(c) *Drains and gutters.* All drains and gutters shall be properly installed with approved traps and vents. The drainage and plumbing system must permit the quick runoff of all water from official establishment buildings, and surface water around buildings and on the premises; and all such water shall be disposed of in such a manner as to prevent a nuisance or health hazard. Tanks or other equipment whose drains are connected to the waste system must have such screens and vacuum breaking devices affixed so as to prevent the entrance of waste water, material, and the entrance of vermin to the processing tanks or equipment.

(d) *Water supply.* There shall be ample supply of both hot and cold water; and the water shall be of safe and sanitary quality with adequate facilities for its (1) distribution throughout buildings, and (2) protection against contamination and pollution.

Sea water of safe suitable and sanitary quality may be used in the processing of various fishery products when approved by NMFS prior to use.

(e) *Construction.* Roofs shall be weathertight. The walls, ceilings, partitions, posts, doors, and other parts of all buildings and structures shall be of such materials, construction, and finish as to permit their efficient and thorough cleaning. The floors shall be constructed of tile, cement, or other equally impervious material, shall have good surface drainage, and shall be free from openings or rough surfaces which would interfere with maintaining the floors in a clean condition.

(f) *Processing rooms.* Each room and each compartment in which any processed products are handled, processed, or stored (1) shall be so designed and constructed as to insure processing and operating conditions of a clean and orderly character; (2) shall be free from objectional odors and vapors; and (3) shall be maintained in a clean and sanitary condition.

(g) *Prevention of animals and insects in official establishment(s).* Dogs, cats, birds, and other animals (including, but not being limited to rodents and insects) shall be excluded from the rooms from which processed products are being prepared, handled, or stored and from any rooms from which ingredients (including, but not being limited to salt, sugar, spices, flour, batter, breading, and fishery products) are handled and stored. Screens, or other devices, adequate to prevent the passage of insects shall, where practical, be provided for all outside doors and openings. The use of chemical compounds such as cleaning agents, insecticides, bactericides, or rodent poisons shall not be permitted except under such precautions and restrictions as will prevent any possibility of their contamination of the processed product. The use of such compounds shall be limited to those circumstances and conditions as approved by NMFS.

(h) *Inspector's office.* Furnished suitable and adequate office space, including, but not being limited to, light, heat, and janitor service shall be provided rent free in official establishments for use for official purposes by the inspector and NMFS representatives. The room or rooms designated for this purpose shall meet with the approval of NMFS and shall be conveniently located, properly ventilated, and provided with lockers or cabinets suitable for the protection and storage of inspection equipment and supplies and with facilities suitable for inspectors to change clothing.

(i) Adequate parking space, conveniently located, for private or official vehicles used in connection with providing inspection services shall be provided.

[36 FR 21040, Nov. 3, 1971]

§ 260.100 Facilities.

Each official establishment shall be equipped with adequate sanitary facilities and accommodations, including, but not being limited to, the following:

(a) Containers approved for use as containers for processed products shall not be used for any other purpose.

(b) No product or material not intended for human food or which creates an objectionable condition shall be processed, handled, or stored in any room, compartment, or place where any fishery product is manufactured, processed, handled, or stored.

(c) Suitable facilities for cleaning and sanitizing equipment (e.g., brooms, brushes, mops, clean cloths, hose, nozzles, soaps, detergent, sprayers) shall be provided at convenient locations throughout the plant.

[36 FR 21040, Nov. 3, 1971]

§ 260.101 Lavatory accommodations.

Modern lavatory accommodations, and properly located facilities for cleaning and sanitizing utensils and hands, shall be provided.

(a) Adequate lavatory and toilet accommodations, including, but not being limited to, running hot water (135° F. or more) and cold water, soap, and single service towels, shall be provided. Such accommodations shall be in or near toilet and locker rooms and also at such other places as may be essential to the cleanliness of all personnel handling products.

(b) Sufficient containers with covers shall be provided for used towels and other wastes.

(c) An adequate number of hand washing facilities serving areas where edible products are prepared shall be operated by other than hand-operated controls, or shall be of a continuous flow type which provides an adequate flow of water for washing hands.

(d) Durable signs shall be posted conspicuously in each toilet room and locker room directing employees to wash hands before returning to work.

(e) Toilet facilities shall be provided according to the following formula:

Number of persons	Toilet bowls required
1 to 15, inclusive	1
16 to 35, inclusive	2
36 to 55, inclusive	[1] 3
56 to 80, inclusive	[1] 4
For each additional 30 persons in excess of 80	[1] 1

[1] Urinals may be substituted for toilet bowls but only to the extent of one-third of the total number of bowls required.

All toilet equipment shall be kept operative, in good repair, and in a sanitary condition.

[36 FR 21041, Nov. 3, 1971]

§ 260.102 Equipment.

All equipment used for receiving, washing, segregating, picking, processing, packaging, or storing any processed products or any ingredients used in the manufacture or production thereof, shall be of such design, material, and construction as will:

(a) Enable the examination, segregation, preparation, packaging, and other processing operations applicable to processed products, in an efficient, clean, and sanitary manner, and

(b) Permit easy access to all parts to insure thorough cleaning and effective bactericidal treatment. Insofar as is practicable, all such equipment shall be made of smooth impermeable corrosion-resistant material that will not adversely affect the processed product by chemical action or physical contact. Such equipment shall be kept in good repair and sanitary condition. Such equipment shall be cleaned and sanitized at a frequency as is necessary or required in accordance with Good Manufacturing Practice Regulations, 21 CFR Part 128.

[36 FR 21041, Nov. 3, 1971]

§ 260.103 Operations and operating procedures shall be in accordance with an effective sanitation program.

(a) All operators in the receiving transporting, holdings, segregating, preparing, processing, packaging, and storing of processed products and ingredients, used as aforesaid, shall be strictly in accord with clean and sanitary methods and shall be conducted as rapidly as possible and at temperatures that will inhibit and retard the growth of bacterial and other microorganisms and prevent any deterioration or contamination of such processed products or ingredients thereof. Mechanical adjustments or practices which may cause contamination of foods by oil, dust, paint, scale, fumes, grinding materials, decomposed food, filth, chemicals, or other foreign materials shall not be conducted during any manufacturing or processing operation.

(b) All processed products, raw materials, ingredients, and components thereof shall be subject to inspection during each manufacturing or processing operation. To assure a safe, wholesome finished product, changes in processing methods and procedures as may be required by the Director shall be effectuated as soon as practicable. All processed products which are not manufactured or prepared in accordance with the requirements contained in § 260.96 to § 260.104 or are unwholesome or otherwise not fit for human food shall be removed and segregated prior to any further processing operation.

(c) Official establishments operating under Federal inspection should have an effective quality control program as appropriate for the nature of the products and processing operations.

(d) All ingredients used in the manufacture or processing of any processed product shall be wholesome and fit for human food.

(e) The methods and procedures employed in the receiving, segregating, handling, transporting, and processing of ingredients in official establishment(s) shall be adequate to result in a satisfactory processed product. Such methods and procedures include, but are not limited to, the following requirements:

(1) Containers, utensils, pans, and buckets used for the storage or transporting of partially processed food ingredients shall not be nested unless rewashed and sanitized before each use;

(2) Containers which are used for holding partially processed food ingredients shall not be stacked in such manner as to permit contamination of the partially processed food ingredients;

(3) Packages or containers for processed products shall be clean when being filled with such products; and all reasonable precautions shall be taken to avoid soiling or contaminating the surface of any package or container liner which is, or will be, in direct contact with such products.

(f) Retention tags: (1) Any equipment such as, but not limited to, conveyors, tillers, sorters, choppers, and containers which fail to meet appropriate and adequate sanitation requirements will be identified by the inspector in an appropriate and conspicuous manner with the word "RETAINED." Following such identification, the equipment shall not be used until the discrepancy has been resolved, the equipment reinspected and approved by the inspector and the "RETAINED" identification removed by the inspector.

(2) Lot(s) of processed products that may be considered to be mislabeled and/or unwholesome by reason of contaminants or which may otherwise be in such condition as to require further evaluation or testing to determine that the product properly labeled and/or wholesome will be identified by the inspector in an appropriate and conspicuous manner with the word "RETAINED." Such lot(s) of product shall be held for reinspection or testing. Final disposition of the lot(s) shall be determined by NMFS and the removal of the "RETAINED" identification shall be performed by the inspector.

[36 FR 21041, Nov. 3, 1971]

§ 260.104 Personnel.

The establishment management shall be responsible for taking all precautions to assure the following:

(a) *Disease control.* No person affected by disease in a communicable form, or while a carrier of such disease, or while affected with boils, sores, infected wounds, or other abnormal sources of microbiological contamination, shall work in a food plant in any capacity in which there is a reasonable possibility of food ingredients becoming contaminated by such person, or of disease being transmitted by such person to other individuals.

(b) *Cleanliness.* All persons, while working in direct contact with food preparation, food ingredients, or surfaces coming into contact therewith shall:

(1) Wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygenic practices while on duty, to the extent necessary to prevent contamination of food products.

(2) Wash and sanitize their hands thoroughly to prevent contamination by undesirable microorganisms before starting work, after each absence from the work station, and at any other time when the hands may have become soiled or contaminated.

(3) Remove all insecure jewelry and, when food is being manipulated by hand, remove from hands any jewelry that cannot be adequately sanitized.

(4) If gloves are used in food handling, maintain them in an intact, clean, and sanitary condition. Such gloves shall be of an impermeable material except where their usage would be inappropriate or incompatible with the work involved.

(5) Wear hair nets, caps, masks, or other effective hair restraints. Other persons that may incidentally enter the processing areas shall comply with this requirement.

(6) Not store clothing or other personal belongings, eat food, drink beverages, chew gum, or use tobacco in any form in areas where food or food

ingredients are exposed or in areas used for washing equipment or utensils.

(7) Take any other necessary precautions to prevent contamination of foods with microorganisms or foreign substances including, but not limited to perspiration, hair, cosmetics, tobacco, chemicals, and medicants.

(c) *Education and training.* Personnel responsible for identifying sanitation failures or food contamination should have a background of education or experience, or a combination thereof, to provide a level of competency necessary for production of clean wholesome food. Food handlers and supervisors should receive appropriate training in proper food-handling techniques and food-protection principles and should be cognizant of the danger of poor personal hygiene and unsanitary practices, and other vectors of contamination.

[36 FR 21041, Nov. 3, 1971]

LABELING REQUIREMENTS

§§ 260.200-260.201 [Reserved]

PART 261—UNITED STATES STANDARDS FOR GRADES OF WHOLE OR DRESSED FISH

Subpart A—United States Standards for Grades of Whole or Dressed Fish

Sec.
261.101 Scope and product description.
261.102 Product forms.
261.103 Grades—quality factors.
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Subpart B—United States Standards for Grades of Frozen Headless Dressed Whiting

261.151 Description of the product.
261.152 Grades of frozen headless dressed whiting.
261.161 Determination of the grade.
261.171 Definitions and methods of analysis.
261.175 Tolerances for certification of officially drawn samples.

AUTHORITY: 7 U.S.C. 1621-1630.

SOURCE: 42 FR 52750, Sept. 30, 1977, unless otherwise noted.

Subpart A—United States Standards for Grades of Whole or Dressed Fish

§ 261.101 Scope and product description.

This standard shall apply to whole or dressed fish, whether fresh or frozen, of any species suitable for use as human food and processed and maintained in accordance with good manufacturing practices.

§ 261.102 Product forms.

(a) *Types.* (1) Fresh.

(2) Frozen solid packs; glazed or unglazed.

(3) Frozen individually; glazed or unglazed.

(b) *Styles.* (1) Whole.

(2) Dressed-eviscerated.

(3) Head-on or headless.

(4) With or without fins.

(5) Skin-on scaled or unscaled; semiskinned (epidermis removed) or skinless.

(6) Other (as specified).

§ 261.103 Grades—quality factors.

(a) *U.S. Grade A.* Whole or dressed fish shall:

(1) Possess good flavor and odor and;

(2) Comply with the limits for defects for U.S. Grade A quality in accordance with § 261.104.

(b) *U.S. Grade B.* Whole or dressed fish shall:

(1) Possess reasonably good flavor and odor and;

(2) Comply with the limits for defects for U.S. Grade B quality in accordance with § 261.104.

(c) *Substandard.* Whole or dressed fish does not possess reasonably good flavor and odor and/or exceeds the limits for defects for U.S. Grade B quality in accordance with § 261.104.

§ 261.104 Determination of grade.

(a) *Procedures for grade determination.* The grade shall be determined by sampling in accordance with the sampling plan described in paragraph (b) of this section evaluating odor and flavor in accordance with paragraph (c) of this section examining for defects in accordance with paragraphs (d), (e) and (f) of this section and using the results to assign a grade as described in paragraph (g) of this section.

(b) *Sampling.* The sampling rate of specific lots for all inspections, other than for military procurement, shall be in accordance with the sampling plans contained in Part 260 of this chapter except that the sampling unit is ten (10) fish for fish weighing up to 10 pounds. Fish weighing over ten (10) up to fifty (50) pounds—the sample unit shall be five (5) fish. For fish weighing over fifty (50) pounds, the sample unit shall be a minimum of three (3).

(c) *Evaluation of flavor and odor.* (1) Evaluation of the odor on each of the raw fish in the sample unit shall be carried out as follows:

(i) For the examination of small units, break the flesh or thawed sample either with the thumbs or by cutting with a knife in several places. Hold the cut or broken flesh close to the nose for evaluation.

(ii) For the examination of large units, a core may be used. Drill a hole into the hard frozen fish with a high-speed quarter inch drill. As soon as the drill is withdrawn, the hole and drillings are smelled.

(2) If the results of the raw odor evaluation indicate the existence of any off-odors, the sample shall be cooked by any of the methods set forth below to verify the flavor and odor.

(i) *Boil in bag method.* Insert the sample into a boilable film-type pouch; fold the open end of the pouch over a suspension bar and clamp in place to provide a loose seal after evacuating the air by immersing the pouch into boiling water. Cook the contents for 20 minutes (until the internal temperature of the product reaches 160 degrees F.).

(ii) *Steam method.* Wrap the sample in a single layer of aluminum foil, and place on a wire rack suspended over boiling water in a covered container. Steam the packaged product for 20 minutes.

(iii) *Bake method.* Package the product as previously described. Place the packaged product on a flat cookie sheet or shallow flat-bottom pan of sufficient size so that the packages can be evenly spread on the sheet or pan. Place the pan and frozen contents in a properly ventilated oven preheated to 400 degrees F. for 20 minutes.

(3) The amount of material to be cooked shall be based on the results of the raw odor evaluation. A minimum of 25 percent of the sample except that not less than 3 sample units shall be used.

(d) *Examination for physical defects.* Each of the fish in the sample will be examined for defects using the list of defect definitions, and the defects noted and categorized as minor, major, and serious in accordance with Table 1.

(e) *Definitions of defects in whole or dressed fish.* (1) "Abnormal condition" means that the normal physical and/or chemical structure of the fish flesh has been sufficiently changed so that the usability and/or desirability of the fish is adversely affected. It includes, but is not limited to, the following examples:

(i) Jellied—refers to the abnormal condition wherein a fish is partly or wholly characterized by a gelatinous, glossy, translucent appearance.

(ii) Milky—refers to the abnormal condition wherein a fish is partly or wholly characterized by a milky-white, excessively mushy, pasty, or fluidized appearance.

(iii) Chalky—refers to an abnormal condition wherein a fish is partly or wholly characterized by a dry, chalky, granular appearance, and fiberous structure.

(A) Moderate—refers to a condition that is distinctly noticeable but does not seriously affect the appearance, desirability and/or the eating quality of the product.

(B) Excessive—refers to a condition which is both distinctly noticeable and seriously objectionable.

(2) "Appearance defects" shall refer to the overall general appearance of the fish (consistency of the flesh, odor, eyes, gills, and skin) and presence of excessive blood or drip and appearance of the package.

(i) Slight—refers to an appearance defect that is slightly noticeable but does not seriously affect the appearance, desirability, and/or eating quality of the fish.

(ii) Moderate—refers to an appearance, defect that is conspicuously noticeable but does not seriously affect the appearance, desirability, and/or eating quality of the fish.

(iii) Excessive—refers to an appearance defect that is conspicuously noticeable and that does seriously affect the appearance, desirability, and/or eating quality of the fish.

(3) "Discoloration" refers to any color not characteristic of the species used.

(i) Slight—refers to the area affected by discoloration of significant intensity involving up to 10 percent of the total area.

(ii) Moderate—refers to the area affected by discoloration of significant intensity involving over 10 percent and up to 50 percent of the total area.

(iii) Excessive—refers to the area affected by discoloration of significant intensity involving over 50 percent of the total area.

(4) "Dehydration" refers to loss of moisture from fish surfaces during frozen storage. For skin-on fish, dehydration shall be evaluated by degree of dullness and shrinkage.

(i) Slight dehydration—is surface color masking affecting more than 3 percent of the area which can be readily removed by scraping with a blunt instrument.

(ii) Moderate dehydration—is deep color masking penetrating the flesh, affecting less than 3 percent of the area, and requiring a knife or other sharp instrument to remove.

(iii) Excessive dehydration—is deep color masking penetrating the flesh, affecting more than 3 percent of the area, and requiring a knife or other sharp instrument to remove.

(5) "Surface defects" shall refer to the following where applicable:

(i) Scales. An occurrence of attached or loose scales in any sample unit (where applicable).

(ii) Blood spot. An accumulation of coagulated opaque, masses of blood on a fish.

(iii) Fins or pieces of fin. An occurrence or absence of attached or loose fins or pieces of fin in any sample unit (where applicable). Dorsal spine shall be removed (where applicable).

(iv) Skin. The presence of the dark or light inner layers of skin for skinless. For semiskinned, reference is to the presence of the dark outside layers.

(v) Bruises. An accumulation of damaged portions of fish muscle, red and opaque in appearance (on a fish).

(vi) Damage to protective coating refers to voids in ice glaze or tears in covering membrane, also to breaks or splits in the skin which are readily discernible and not normally part of the processing.

(6) "Cutting and trimming defects" refers to the following:

(i) Body cavity cuts—refers to misplaced cuts made during evisceration.

(ii) Improper heading (as specified)—refers to the presence of pieces of gills, gill cover, pectoral fins (spine), or collarbone after the fish have been headed. No ragged cuts should be evident after heading.

(iii) Evisceration defects—refers to inadequate cleaning of the belly cavity of the fish. All viscera, kidney (where applicable), spawn, and blood should be removed.

(A) Slight degree of improper evisceration and improper heading refers to a condition that is scarcely noticeable but does not affect the appearance, desirability, and/or eating quality of the fish.

(B) Moderate degree of improper evisceration and improper heading refers to a condition that is conspicuously noticeable but does not seriously affect the appearance, desirability, and/or eating quality of the fish.

(C) Excessive degree of improper evisceration refers to a condition that is conspicuously noticeable and that seriously affect the appearance, desirability, and/or eating quality of the fish.

(iv) Improper washing—inadequate removal of slime, blood, and bits of viscera from the surface of the fish and from the body cavity.

(v) Belly burn—an enzymatic action on the flesh causing a burned or discolored appearance.

(7) "Texture defects" texture of the cooked fish; not characteristic of the species.

(i) Slight—fairly firm, only slightly tough or rubbery, does not form a fibrous mass in the mouth, moist but not mushy.

(ii) Moderate—moderately tough or rubbery, has noticeable tendency to form a fibrous mass in the mouth, moist but not mushy.

(iii) Excessive—excessively tough or rubbery, has marked tendency to form a fibrous mass in the mouth, or is very dry or very mushy.

(f) *Categorization of physical defects.*

TABLE I

Physical defects		Categories		
Types	Degree	Minor	Major	Serious
Abnormal condition	Moderate		201	
	Excessive			301
Appearance defects	Slight	102		
	Moderate		202	
	Excessive			302
Discoloration	Slight	103		
	Moderate		203	
	Excessive			303
Dehydration	Slight—more than 3 percent area affected and easily removed.	104		
	Moderate—less than 3 percent area affected but difficult to remove.		204	
	Excessive—greater than 3 percent area affected			304
Surface defects	Slight—3 to 10 percent area affected	105		
	Moderate—greater than 10 percent area affected		205	
Cutting and trimming defects	Body cavity cuts	106		
	Improper heading:			
	Slight	107		
	Moderate		206	
	Evisceration defects:			
	Slight	108		
	Moderate		207	
	Excessive			305
	Improper washing	109		
	Belly burn		208	
Texture defects	Slight	110		
	Moderate		209	
	Excessive			306

NOTE: The code numbers shown in the above table are for identification of defects for recording purposes only and are keyed to the nature and severity of the defect. They are not scores.

(g) *Grade assignment.* (1) Each fish in a sample unit will be assigned the grade into which it falls in accordance with the limits for defects, summarized as follows:

Flavor and odor		Maximum number of physical defects permitted		
		Minor	Major	Serious
Grade A	Good	3	0	
Grade B	Reasonably good.	5	1	

(2) Upon determination of grade of each fish in each sample unit, the sample will be designated a grade as follows:

(i) *Grade A.*

Number of subsample units (fish)	Min. No. grade A fish	Max. No. grade B fish	Max. No. substandard
10 (up to 10 lb)	8	2	0
5 (10 to 50 lb)	4	1	0
3 (over 50 lb)	3	0	0

(ii) *Grade B.*

Number of subsample units (fish)	Minimum number of grade B fish	Maximum number of substandard
10 (up to 10 lb)	8	2
5 (10 to 50 lb)	4	1
3 (over 50 lb)	3	0

(iii) *Substandard.* Any fish not meeting the minimum requirements for Grade B quality.

(3) Upon determination of the grade for each sample unit a lot of whole or dressed fish shall be assigned that grade in which:

(i) For physical defects, the number of sample units in the next lower grade does not exceed the acceptance number for deviants prescribed in § 260.61 of the sampling plan, Table II, of Title 50; and

(ii) Not more than 5 percent of the fish in the sample (total fish examined per lot) are in the next lower grade for odor and/or flavor.

NOTE: Sampling for inspection for military procurement shall be in accordance with MIL-STD-105. Lot size shall be expressed in terms of pounds. The sample size shall be in accordance with Inspection Level S-3. Acceptable Quality Levels shall be expressed in terms of defects per hundred units. The AQL's shall be 6.5 for minor and 4.0 for major.

§ 261.105 Hygiene.

Whole or dressed fish shall be processed and maintained in accordance with the applicable requirements of the regulations contained in §§ 260.96 to 260.103 of this chapter and of the good manufacturing practice regulations contained in 21 CFR Part 128.

Subpart B—United States Standards for Grades of Frozen Headless Dressed Whiting

§ 261.151 Description of the product.

The product described in this part consists of clean, wholesome whiting (silver hake) *merluccius bilineraris, merluccius albidus;* completely and cleanly headed and adequately eviscerated. The fish are packaged and frozen in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product.

§ 261.152 Grades of frozen headless dressed whiting.

(a) "U.S. Grade A" is the quality of frozen headless dressed whiting that (1) possess a good flavor and odor and that (2) for those factors that are rated in accordance with scoring system outlined in this part, have a total score of 85 to 100 points.

(b) "U.S. Grade B" is the quality of frozen headless dressed whiting that (1) possess at least reasonably good flavor and odor and that (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" or "Utility" is the quality of frozen headless dressed whiting that meet the requirements of § 261.151 but that otherwise fail to meet the requirements of "U.S. Grade B."

§ 261.161 Determination of the grade.

In a plant under USDC Contract Inspection the grade is determined by examining the product for factors 1-10 in the thawed state and factor 11 in the cooked state. For lot inspection, examination of the product for factors 1, 2 and 3 is carried out in the frozen state and 4-10 in the thawed state. Factor 11 is examined in the cooked state.

(a) *Factors rated by score points.* Points are deducted for variations in the quality of each factor in accordance with the schedule in Table 1. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100 the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling and tasting after the product has been cooked in accordance with § 261.171.

(1) Good flavor and odor (essential requirements for a U.S. Grade A product) means that the cooked product has the typical flavor and odor of the species and is free from rancidity, bitterness staleness, and off-flavors and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a U.S. Grade B product) means that the cooked product is lacking in good flavor and odor but is free from objectionable off-flavors and off-odors of any kind.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE

Factors scored	Method of determining score	Deduct
FROZEN STATE (LOT INSPECTION ONLY)		
1 Arrangement of product [1]	Small degree: 10 percent of fish twisted or bellies and backs not facing the same direction. Large degree: More than 10 percent of fish twisted, void present or some fish cross packed.	2 5
2 Condition of packaging (overall assessment).	Poor: Packaging material has been soaked, softened or deteriorated	2
3 Dehydration	Small degree: Slight dehydration of the exposed surfaces Large degree: Deep dehydration of the exposed surfaces	2 5
THAWED STATE		
4 Minimum size: Fish 2 oz. or over are of acceptable size.	Number of fish less than 2 oz. per lb.: Over 0—not over 0.5 Over 0.5—not over 1.0 Over 1.0—not over 2.0 Over 2.0	 5 10 20 30
5 Uniformity. Weight ratio of fish remaining. The 10 percent largest fish divided by the 10 percent smallest fish.	Weight ratio 10 percent smallest and 10 percent largest: Over 2.0—not over 2.4 Over 2.4—not over 2.8 Over 2.8—not over 3.2 Over 3.2—not over 3.6 Over 3.6	 2 5 10 20 30
6 Heading [1]	Small degree: 10 percent of fish carelessly cut Moderate degree: Over 10 percent of fish carelessly cut	5 15
7 Evisceration (overall assessment)	Small degree: Slight evidence of viscera Moderate degree: Moderate amounts of spawn, viscera, etc Large degree: Large amounts of viscera, spawn, etc	10 10 30
8 Scaling [1]	Small degree: 10 percent of fish not well scaled Large degree: Over 10 percent of fish not well scaled	2 5
9 Color of the exposed surfaces (overall assessment).	Small degree: Minor darkening, dulling Large degree: Objectionably dark, brown, dull	2 5
10 Bruises and split or broken skin	Presence of bruises and/or broken or split skin per pound: Over 0—not over 0.5 Over 0.5—not over 1.0 Over 1.0—not over 1.5 Over 1.5—not over 2.0 Over 2.0	 1 2 4 7 10
11 Texture (overall assessment)	Small degree: Moderately dry tough, mushy, rubbery, watery, stringy Large degree: Excessively dry, tough, mushy, rubbery, watery, stringy	5 15

[1] 10 percent of fish refers to 10 percent by count rounded to nearest whole fish.

§ 261.171 Definitions and methods of analysis.

(a) *Selection of the sample unit.* The sample unit consists of the primary container and its entire contents. The whiting are examined according to Table 1. Definitions of factors for point deductions are as follows:

(b) *Examination of sample, frozen state.* When this product is examined under USDC Contract Inspection, the samples are examined for factors 1, 2, and 3 in Table 1 in the thawed state. When the product is lot inspected, the samples are examined for factors 1, 2, and 3 in Table 1 in the frozen state.

(1) *"Arrangement of product"* refers to the packing of the product in a symmetrical manner, bellies or backs all facing in the same direction, fish neatly dovetailed.

(2) *"Condition of the packaging material"* refers to the condition of the cardboard or other packaging material of the primary container. If the fish is allowed to stand after packing and prior to freezing moisture from the fish will soak into the packaging mate-

rial and cause deterioration of that material.

(3) *"Dehydration"* refers to the presence of dehydrated (water-removed) tissue on the exposed surfaces of the whiting. Slight dehydration is surface dehydration which is not color-masking. Deep dehydration is color-masking and cannot be removed by scraping with a fingernail.

(c) *Examination of sample, thawed state.* Thawed state means the state of the product after being thawed. Thawing the sample is best accomplished by enclosing the sample in a film type bag and immersing in an agitated water bath held at 68° F., ±2° F. Allow the product to remain immersed until thawed. Alternatively when the facilities are lacking for water thawing, the sample may be thawed by slacking it out at a temperature between 30° to 40° F. on an aluminum tray from 2 hours for a 1½-pound sample to 8 hours for a 10-pound sample.

(1) *"Minimum size"* refers to the size of the individual fish in the sample. Fish 2 ounces or over are considered acceptable. Smaller fish cannot be cooked uniformly with acceptable size fish. Separate the fish of unacceptable size, divide their number by the weight of the sample in pounds, and apply to Table 1. Example—four fish of unacceptable size in a 5-pound package is $\frac{4}{5}=0.8$, a 10 point deduction.

(2) *"Uniformity."* From the fish remaining, select by count 10 percent (minimum of one fish) of the largest and 10 percent (minimum of one fish) of the smallest and divide the largest weight by the smallest weight to get a weight ratio.

(3) *"Heading"* refers to the condition of the fish after they have been headed. The fish should be cleanly headed behind the gills and pectoral fins. No gills, gill bones, or pectoral fins should remain after the fish have been headed.

(4) *"Evisceration"* refers to the cleaning of the belly cavities of the fish. All spawn, viscera, and belly strings should be removed.

(5) *"Scaling"* refers to the satisfactory removal of scales from the fish.

(6) *"Color of the cut surfaces"* refers to the color of the cut surfaces of the fish after heading and other processing.

(7) *"Bruises and broken or split skin"* refers to bruises over one-half square inch in area and spilts or breaks in the skin more than one-half inch in length which are not part of the processing.

(d) *Examination of sample, cooked state.* Cooked state means the state of the sample after being cooked. Cooking the sample is best accomplished by inserting the sample into a film type bag and submerging it into boiling water for from 18-20 minutes. A minimum of three fish per sample unit shall be cooked.

(1) *"Texture defects"* refers to the absence of normal textural properties of the cooked fish flesh, which are tenderness, firmness, and moistness without excess water. Texture defects are dryness, softness, toughness, and rubberyness.

(e) *General definitions.*

(1) *Small* (overall assessment) refers to a condition that is noticeable but is only slightly objectionable.

(2) *Moderate* (overall assessment) refers to a condition that is distinctly noticeable but is not seriously objectionable.

(3) *Large* (overall assessment) refers to a condition which is both distinctly noticeable and seriously objectionable.

§ 261.175 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 Subpart A of this chapter, (Regulations Governing Processed Fishery Products.)

PART 262—UNITED STATES STANDARDS FOR GRADES OF FISH STEAKS

Subpart A—[Reserved]

Subpart B—United States Standards for Grades of Frozen Halibut Steaks

Sec.
262.151 Product description.
262.152 Styles of frozen halibut steaks.
262.153 Grades of frozen halibut steaks.
262.156 Recommended dimensions.
262.161 Ascertaining the grade.

Sec.
262.171 Definitions and methods of analysis.
262.175 Tolerances for certification of officially drawn samples.

SCORE SHEET

262.181 Score sheet for frozen halibut steaks.

Subpart C—United States Standards for Grades of Frozen Salmon Steaks

262.201 Product description.
262.202 Styles.
262.203 Grades.
262.206 Recommended dimensions.
262.211 Ascertaining the grade.
262.221 Definitions.
262.225 Tolerances for certification of officially drawn samples.
262.231 Score sheet for frozen salmon steaks.

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SOURCE: 42 FR 52753, Sept. 30, 1977, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—United States Standards for Grades of Frozen Halibut Steaks

§ 262.151 Product description.

Frozen halibut steaks are clean, wholesome units of frozen raw fish flesh with normally associated skin and bone and are 2 ounces of more in weight. Each steak has two parallel surfaces and is derived from whole or subdivided halibut slices of uniform thickness which result from sawing or cutting perpendicularly to the axial length, or backbone, of a whole halibut. The steaks are prepared from either frozen or unfrozen halibut (Hippoglossus spp.) and are processed and frozen in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product.

§ 262.152 Styles of frozen halibut steaks.

(a) *Style I, random weight pack.* The individual steaks are of random weight and neither the weight nor the range of weights are specified.

(b) *Style II, uniform weight or portion pack.* All steaks in the package or in the lot are of a specified weight or range of weights.

§ 262.153 Grades of frozen halibut steaks.

(a) "U.S. Grade A" is the quality of frozen halibut steaks which possess good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlined in the following sections the total score is not less than 85 points.

(b) "U.S. Grade B" is the quality of frozen halibut steaks which possess at least reasonably good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlined in the following sections the total score is not less than 70 points.

(c) "Substandard" is the quality of frozen halibut steaks which fail to meet the requirements of the "U.S. Grade B."

§ 262.156 Recommended dimensions.

(a) The recommended dimensions of frozen halibut steaks are not incorporated in the grades of the finished product since dimensions, as such, are not factors of quality for the purpose of these grades. However, the degree of uniformity of thickness among units of the finished product is rated since it is a factor affecting the quality and utility of the product.

(b) It is recommended that the thickness (smallest dimension) of individually frozen halibut steaks be not less than ½ inch and not greater than 1¼ inches.

§ 262.161 Ascertaining the grade.

The grade is ascertained by observing the product in the frozen, thawed, and cooked states and is evaluated by consideration of the following:

(a) *Factors rated by score points.*The quality of the product with respect to scored factors is expressed numerically. Cumulative point deductions are assessed for variations of quality for each factor in accordance with the schedule in Table I, in the frozen, thawed, and cooked states. The total deduction is subtracted from the maximum possible score of 100 to obtain the product score.

(b) *Factors not rated by score points.*The factors of flavor and odor are evaluated organoleptically in the cooked state for both the light and dark meat (surface fat) and are defined as follows:

(1) *Good flavor and odor.* "Good flavor and odor" (essential requirement for Grade A) means that the fish flesh has the good flavor and odor characteristics of halibut, and is free from rancidity and from off-flavors and off-odors.

(2) *Reasonably good flavor and odor.* "Reasonably good flavor and odor" (minimum requirement for Grade B) means that the fish flesh may be somewhat lacking in the good flavor and odor characteristic of halibut, is reasonably free of rancidity, and is free from objectionable off-flavors and off-odors.

(3) *Substandard flavor and odor.* "Substandard flavor and odor" (Substandard grade) means that the flavor and odor fail to meet the requirements of "reasonably good flavor and odor."

(c) *Determination of final product grade.* The final product grade is derived on the basis of both the product score as determined by the "factors rated by score points" and the grade requirements of flavor and odor as defined under "factors not rated by score points." The lower of the two determines the final grade.

TABLE I—SCHEDULE OF POINT DEDUCTIONS FOR FACTORS RATED BY SCORE POINTS[1]

Factor	Description of quality variation	Deduct
	FROZEN	
	(Per steak)	
1 Dehydration[2]	Surface area affected:	
	Less than 1 square inch but obvious	1
	1 to 2 square inches	2
	Above 2 square inches	3
2 Percentage glaze	Over 0.0, not over 6.0 percent by weight of sample unit	0
	Over 6.0, not over 7.0	1
	Over 7.0, not over 8.0	2
	Over 8.0, not over 9.0	3
	Over 9.0	4
3 Uniformity of thickness	For each 1/16 inch above 1/8 inch variation in steak thickness (maximum total deduction permitted 6 points per sample unit).	2
4 Uniformity of weight and minimum weight.	Style I—Random weight.—Use either (a) or (b), whichever gives a greater deduction.	
	(a) For each steak less than 3.0 ounces in weight per sample package.	4
	(b) For each 0.1 ounce below 4.0 ounces in average steak weight per sample.	½
	Style II—Uniform weight or portions.—For each full 1 percent of the steaks deviating by more than 0.6 ounce from the specified portion weight or the average of the specified portion range (per sample package).	2
	THAWED	
5 Workmanship—Defects of: Cutting, collar bone, loose skin, fins, blood spots, bruises, foreign material, backbone, cartilage, sawdust.	Slight or moderate	1
	Excessive	2
	(For each defect, per occurrence, per sample package or per 2 pounds for packages over 2 pounds net weight).	
	(Per sample unit)	
6 Color defects:	Slight	1
(a) Discoloration of drip liquor	Moderate	2
	Excessive	3
	(Per steak)	
	Slight	1
(b) Discoloration of light meat[2]	Moderate	2
	Excessive	3
	(Per steak)	
(c) Discoloration of dark meat[2]	Slight	1
	Moderate	2
	Excessive	3

TABLE I—SCHEDULE OF POINT DEDUCTIONS FOR FACTORS RATED BY SCORE POINTS[1]—Continued

Factor	Description of quality variation	Deduct
	(Per sample unit)	
(d) Non-uniformity of color	Slight	1
	Moderate	2
	Excessive	3
	(Per steak)	
7 Honeycombing[2]	Surface area affected:	
	26 to 50 percent	½
	51 to 75 percent	1
	76 to 100 percent	2
	COOKED	
8 Texture defect[2] (tough, dry, fibrous, or watery)	(Per steak)	
	Slight	1
	Moderate	2
	Excessive	3

[1] This schedule of point deductions is based on the examination of sample units composed of: (a) An entire sample package and its contents (for retail sized packages) or (b) a representative subsample consisting of three or more halibut steaks taken from each sample package (for institutional sized packages), except that the entire sample package shall be examined for factor 4.

[2] Point deductions for these factors are based on a 3-steak sample unit. For samples containing other than 3 steaks per sample unit or per package, multiply the results by the correction factor 3/*n* where *n* equals the number of steaks.

§ 262.171 Definitions and methods of analysis.

(a) "Percentage glaze" on halibut steak means the percent by weight of frozen coating adhering to the steak surfaces and includes the frost within the package. It is determined by the method described below or by methods giving equivalent results.

(1) *Equipment needed.* (i) Source of cold tap water with aerated faucet.

(ii) Balance accurate to 0.1 gm.; or 0.01 ounce.

(iii) Paper towels.

(iv) Small knife.

(2) *Procedure.* (i) Weigh package in overwrap and all its contents (A).

(ii) Remove steaks and loose frost; weigh dry packaging (B).

(iii) The difference in weight, A-B represents weight of steaks plus glaze (C).

(iv) Remove glaze from halibut steaks.

(*a*) Adjust tap water to a flow rate of about 3 quarts/min. through an aerated faucet.

(*b*) Direct 50° to 60° F. tap water onto skin side of steak while gently feeling and rubbing cut surfaces with finger tips (if necessary, temperatures up to 80° F. may be used but require closer control).

(*c*) When all glaze is removed from cut flesh surface, as evidenced by absence of slick feel to fingers, remove steak from water.

(*d*) Rapidly remove excess water with single paper towel before it has time to refreeze on the steak, and flick off residual skin glaze by knife or hand.

(*e*) Repeat steps (*b*), (*c*), and (*d*) on each steak in package or sample unit.

(*f*) Weigh deglazed halibut steaks (D, actual net weight of sample).

(Steps (*a*) through (*f*) of this subdivision are completed within 3 minutes.)

(v) Calculate percentage glaze: Percentage glaze$=C-D/D\times 100$.

(b) "Cooked state" means that the thawed product has been cooked in a suitable manner which is defined as being heated submerged in boiling water, unseasoned, and in a boilable film type pouch for 10 minutes. (Steaks over 1 inch in thickness may require 5 additional minutes for heating.)

(c) Uniformity of thickness means that the thickness is substantially the same for one or more steaks within a package or sample unit.

(d) Color defects:

(1) "Discoloration of drip liquor" means that the free liquid which drains from the thawed steaks is discolored with blood residue usually from the dorsal aorta of the halibut.

(2) "Discoloration of light meat" means that the normal flesh color of the main part of the halibut steak has darkened due to deteriorative influences.

(3) "Discoloration of the dark meat" means that the normal color of the surface fat shows increasing degrees of yellowing due to oxidation.

(4) "Nonuniformity of color" refers to noticeable differences in color on a single steak or between adjacent steaks in the same package.

(e) "Dehydration" refers to the appearance of a whitish area on the surface of a steak due to the removal of water or drying of the affected area.

(f) "Honeycombing" refers to the visible appearance of numerous discrete holes or openings of varying size on the steak surface.

(g) "Workmanship defects" refers to appearance defects that were not eliminated during processing and are considered either objectionable or poor commercial practice.

(h) "Texture defect" refers to an undesirable increase in toughness and/or dryness, fibrousness, and watery nature of halibut examined in the cooked state.

§ 262.175 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified on the basis of Part 260 of this chapter.

SCORE SHEET

§ 262.181 Score sheet for frozen halibut steaks.

GENERAL

Label	
Size and kind of container	
Container mark or identification	
Size of lot	
Number of samples	
Actual net weight (ounces)	
Number of steaks per container	
Product style	

Scored factors (table 1)	Deductions
Frozen:	
1. Dehydration	
2. Percentage glaze	
3. Uniformity of thickness	
4. Uniformity of weight	
Thawed:	
5. Workmanship	
6. Color defects	
7. Honeycombing	
Cooked: 8. Texture	
Total deductions	
Rating for scored factors (100—Total deductions)	

Unscored factors	Rating
Cooked:	
a. Odor	
b. Flavor:	
(light meat)	
(dark meat)	
Flavor and odor rating	
Final grade	

Subpart C—United States Standards for Grades of Frozen Salmon Steaks

§ 262.201 Product description.

Frozen salmon steaks are clean, wholesome units of frozen raw fish flesh with normally associated skin and bone and are 2.5 ounces or more in weight. Each steak has to parallel surfaces and is derived from whole or subdivided salmon slices of uniform thickness which result from sawing or cutting dressed salmon perpendicularly to the axial length, or backbone. The steaks are prepared from either frozen or unfrozen salmon (Oncorhynchus spp.) and are processed and frozen in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product. The steaks in an individual package are prepared from only one species of salmon.

(a) *Species.* Frozen salmon steaks covered by this standard are prepared from salmon of any of the following species:

Silver or coho (O. kisutch).
Chum or keta (O. keta).
King, chinook, or spring (O. tshawytscha).
Red, sockeye (O. nerka).
Pink (O. gorbuscha).

§ 262.202 Styles.

(a) *Style I—Random weight pack.* The individual steaks are of random weight and neither the individual steak weight nor the range of weights is specified. The steaks in the lot represent the random distribution cut from the head to tail of a whole dressed salmon.

(b) *Style II—Random weight combination pack.* The individual steaks are of random weight and neither the individual steak weight nor range of weights is specified. The steaks in the lot represent a combination of cuts from selected parts of the whole dressed salmon.

(c) *Style III—Uniform weight or portion pack.* All steaks in the package or in the lot are of a specified weight or range of weights.

§ 262.203 Grades.

(a) "U.S. Grade A" is the quality of frozen salmon steaks that possess good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlined in the following sections the total score is not less than 85 points.

(b) "U.S. Grade B" is the quality of frozen salmon steaks that possess at least reasonably good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlines in the following sections the total score is not less than 70 points.

(c) "Substandard" is the quality of frozen salmon steaks that fail to meet the requirements of the "U.S. Grade B."

§ 262.206 Recommended dimensions.

(a) The recommended dimensions of frozen salmon steaks are not incorporated in the grades of the finished product since dimensions, as such, are not factors of quality for the purpose of these grades. However, the degree of uniformity of thickness among units of the finished product is rated since it is a factor affecting the quality and utility of the product.

(b) It is recommended that the thickness (smallest dimension) of individually frozen salmon steaks be not less than ½ inch and not greater than 1½ inches.

§ 262.211 Ascertaining the grade.

The grade is ascertained by observing the product in the frozen, thawed, and cooked states and is determined by consideration of the following:

(a) *Factors rated by score points.* The quality of the product with respect to all factors is scored numerically. Cumulative point deductions are assessed for variations of quality for the factors in accordance with the schedule in Table I, in the frozen, thawed, and cooked states. The total deduction is substracted from the maximum possible score of 100 to obtain the "product score."

(b) *Factors governed by "limiting rule".* The factors of flavor and odor, in addition to being rated by score points, are further considered for compliance with the "limiting rule" grade requirements of flavor and order in Table I, as defined under Definitions § 262.221(g)(9).

(c) *Determination of the final product grade.* The final product grade is derived on the basis of both the "product score" and the "limiting rule" grade requirements of flavor and odor, per Table I.

TABLE I—SCHEDULE CF POINT DEDUCTIONS FOR FACTORS RATED BY SCORE POINTS [1]

Scored factors	Description of quality variation	Deduct
FROZEN		
1. General appearance defects	Per occurrence:	
	Slight	1–2
	Moderate	3–4
	Excessive	5–10
2. Dehydration	(Per occurrence) for each 1 sq. inch of surface area	1
3. Uniformity of thickness	For each 1/16 inch above ⅛ inch variation tolerance in steak thickness (max. deduction: 6 points).	2

TABLE I—SCHEDULE OF POINT DEDUCTIONS FOR FACTORS RATED BY SCORE POINTS [1]—Continued

Scored factors	Description of quality variation	Deduct
4. Uniformity of weight and minimum weight	Style I & II—Random weight. For each steak between 2.5 and 3.0 ounces in weight per package or per pound of product for packages over 1 pound net wt.	4
	Style III—Uniform weight or portion. For each 0.1 ounce beyond the 0.1 ounce tolerance of the specified portion weight range per 5 lbs. of product.	1
THAWED		
5. Workmanship defects: Blood spots, bruises, cleaning, cutting, fins, foreign material, collarbone, girdle, loose skin, pugh marks, sawdust, scales.	Per occurrence:	
	Slight	1
	Moderate	2-5
	Excessive	5-8
6. Color defects:		
(a) Discoloration of fatty portion	Slight	1-5
	Moderate	3-2
	Excessive	6-10
(b) Discoloration of lean portion	Slight	1-2
	Moderate	3-5
	Excessive	6-10
(c) Non-uniformity of color	Slight	1-2
	Moderate	3-4
	Excessive	5-6
7. Honeycombing	Percent sample area affected:	
	26 to 50	1
	51 to 75	2
	75 to 100	3
COOKED		
8. Texture defect (tough, dry, fibrous, or watery)	Slight	1-2
	Moderate	3-5
	Excessive	6-10
9. Odor [2]	Good (A)	0-2
	Reasonably good (B)	3-5
	Substandard (S)	6-15
10. Flavor:		
(a) Lean portion	Good (A)	0-2
	Reasonably good (B)	3-5
	Substandard (S)	6-15
(b) Fatty portion	Good (A)	0-2
	Reasonably good (B)	3-5
	Substandard (S)	6-15

[1] This schedule of point deductions is based on the examination of sample units composed of: (a) An entire sample package and its contents (for retail sized packages) or (b) a representative subsample consisting of about one pound of salmon steaks taken from each sample package (for institutional sized packages), except that the entire sample package or its equivalent shall be examined for factor 4.

[2] "Limiting rule" grade requirements of flavor and odor: Salmon steaks which received over 5 deduction points for odor, or flavor of the lean, or flavor of the fatty portion, shall not be graded above substandard, and those which receive between 3 to 5 points shall not be graded above "U.S. Grade B," regardless of the total product score. (This is a "limiting rule" based on flavor and odor as defined under definitions § 262.221(g)(9)).

§ 262.221 Definitions.

(a) "Slight" refers to a defect that is scarcely noticeable and may not affect the appearance, the desirability, and/or eating quality of the steaks.

(b) "Moderate" refers to a defect that is conspicuously noticeable (not seriously objectionable) and does not seriously affect the appearance, desirability and/or eating quality of the steaks.

(c) "Excessive" refers to a defect that is conspicuously noticeable (seriously objectionable) and seriously affects the appearance, desirability, and/or eating quality of the steaks.

(d) "Occurrence" is defined as each incidence of the same or different types of defects.

(e) "Cooked state" means that the thawed, unseasoned product has been heated within a boilable film-type pouch by immersing the pouch with product in boiling water for 10 minutes. Steaks cooked from the frozen state may require about two additional minutes of cooking.

(f) "Actual net weight" means the weight of the salmon steaks within the package after removal of all packaging material, ice glaze or other protective coatings.

(g) "Scored factors" (Table I):

(1) "General appearance defects" refer to poor arrangement of steaks, distortion of steaks, wide variation in shape, between steaks greater than normal number of head and/or tail pieces, imbedding of packaging material into fish flesh, inside condition of package, frost deposit, excessive or non-uniform skin glaze, and undesirable level of natural color.

(2) "Dehydration" refers to the appearance of a whitish area on the surface of a steak due to the evaporation of water or drying of the affected area.

(3) "Uniformity of thickness" means that steak thickness is within the allowed ⅛-inch manufacturing tolerance between the thickest and thinnest parts of the steaks within a package or sample unit.

(4) "Uniformity of weight and minimum weight" is defined in Table I. (Portions are designated by "weight range" or "specified weight." The "weight range" of portions bearing "specified weight" designation on containers shall be taken as the "specifed weight" plus or minus 0.5 ounces unless otherwise specified.)

(5) "Workmanship defects" refers to appearance defects that were not eliminated during processing and are considered objectionable or poor commercial practice. They include the following: Blood spots, bruises, cleaning (refers to inadequate cleaning of the visceral cavity from blood, viscera and loose or attached appendages), cutting (refers to irregular, inadequate, unnecessary, or improper cuts and/or trimmings), fins, foreign material (refers to any loose parts, of fish or other than fish origin), collar bone, girdle (refers to bony structure adjacent to fin), loose skin, pugh marks, sawdust and scales.

(6) "Color defects":

(i) "Discoloration of fat portion" means that the normal color of the fat shows increasing degrees of yellowing due to oxidation.

(ii) "Discoloration of lean portion" means that the normal surface flesh color has faded or changed due to deteriorative influences.

(iii) "Nonuniformity of color" refers to noticeable differences in surface flesh color on a single steak or between adjacent steaks in the same package or sample unit. It would also include color variation of the visceral cavity and skin watermarking.

(7) "Honeycombing" refers to the visible appearance on the steak surface of numerous discrete holes or openings of varying size.

(8) "Texture defect" refers to an undersirable increase in toughness and/or dryness, fibrousness, and watery nature of salmon examined in the cooked state.

(9) "Odor" and "flavor":

(i) "Good flavor and odor" (essential requirement for Grade A) means that the fish flesh has the good flavor and odor characteristic of the indicated species of salmon, and is free from rancidity and from off-flavors and off-odors.

(ii) "Reasonably good flavor and odor" (minimum requirement for Grade B) means that the fish flesh may be somewhat lacking in the good flavor and odor characteristics of the indicated species of salmon, is reasonably free of rancidity, and is free from objectionable off-flavors and off-odors.

(iii) "Substandard flavor and odor" (substandard grade) means that the flavor and odor fail to meet the requirements of "reasonably good flavor and odor."

§ 262.225 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified on the basis of Part 260 Subpart A on this chapter. (Regulations Governing Processed Fishery Products.)

§ 262.231 Score sheet for frozen salmon steaks.

Label ....
Size and kind of container ....
Container mark or identification ....
Size of lot ....
Number of packages per master carton ....
Size of sample ....
Number of steaks per container ....
Product style ....
Actual net weight.........(ounces).........(lb.) ....

Scored factors	Deductions
FROZEN	
1. General appearance defects	
2. Dehydration	
3. Uniformity of thickness	
4. Uniformity of weight	
THAWED	
5. Workmanship defects	
6. Color defects	
7. Honeycombing	
COOKED	
8. Texture	
9. Odor (Limiting rule—Table I)	
10. Flavor (Limiting rule—Table I)	
Total deductions	
Product score (100—Total deductions)	
Flavor and odor rating	
Final grade	

PART 263—UNITED STATES STANDARDS FOR GRADES OF FISH FILLETS

Subpart A—United States General Standards for Grades of Fish Fillets

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SCORE SHEET

263.181 Score sheet for cod fillets.

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263.325 Tolerances for certification of officially drawn samples.
263.331 Score sheet for ocean-perch fillets.

AUTHORITY: 7 U.S.C. 1621-1630.

SOURCE: 42 FR 57256, Sept. 30, 1977, unless otherwise noted.

Subpart A—United States General Standards for Grades of Fish Fillets

SOURCE: 44 FR 32386, June 6, 1979, unless otherwise noted.

§ 263.101 Scope and product description.

(a) This standard shall apply to fresh or frozen fillets of fish of any species that are suitable for use as human food and processed and maintained in accordance with good manufacturing procedures. It does not apply to products covered by Subparts B, C, D, and E of Part 263.

(b) Fillets are slices of practically boneless fish flesh of irregular size and shape, which are removed from the carcass by cuts made parallel to the backbone and sections of such fillets cut so as to facilitate packing.

§ 263.102 Product forms.

(a) *Types:* (1) Fresh.

(2) Frozen individually (IQF); glazed or unglazed.

(3) Frozen solid packs; glazed or unglazed.

(b) *Styles:* (1) Single.

(i) Skin-on.

(ii) Skin-on scaled.

(iii) Skin-on (white side only) (applies only to flatfish).

(iv) Skin-off (skinless).

(2) Butterfly.

§ 263.103 Grades.

(a) *U.S. Grade A.* Fish fillets shall:

(1) Possess good flavor and odor characteristic of the species; and

(2) Comply with the limits for defects for U.S. Grade A quality as outlined in § 263.104.

(b) *U.S. Grade B.* Fish fillets shall:

(1) Possess reasonably good flavor and odor characteristic of the species; and

(2) Comply with the limits for defects for U.S. Grade B quality in accordance with § 263.104.

(c) *U.S. Grade C.* Fish fillets shall:

(1) Possess minimal acceptable flavor and odor characteristic of the species with no objectionable off-flavors or off-odors; and

(2) Comply with the limits for defects for U.S. Grade C quality in accordance with § 263.104.

(d) *"Substandard".* Fish fillets shall:

(1) Possess minimal acceptable flavor and odor characteristics of the species with no objectionable off-flavors or off-odors; and

(2) Fail to meet the limits for physical defects for U.S. Grade C quality given under § 263.104, paragraphs (d), (e), and (f).

§ 263.104 Grade determination.

(a) *Procedures for grade determination:* The grade shall be determined by evaluating the product in the frozen, and/or thawed, and cooked states. Each defect is classified as to its relative severity as minor, major, or serious in accordance with paragraphs (d), (e), and (f) of this section. Odor and flavor are evaluated in accordance with paragraph (c) of this section. Tolerances for the various defects are set for each grade classification according to group species.

(b) *Sampling.* Sampling is to be done in accordance with the Regulations Governing Processed Fishery Products, Title 50, Chapter II, Subchapter G, Part 260.61, Tables II, V, or VI, where applicable. The sample unit shall be the container and its entire contents for containers up to 10 pounds. A representative 3 pound sample unit for containers over 10 pounds shall be used.

(c) *Evaluation of flavor and odor.* (1) Evaluation of flavor and odor on each of the sample units shall be carried out only by those trained to do so. For evaluation of the odor of raw fillets, the thawed fillets should be broken and the broken flesh held close to the nose immediately to detect off-odor.

(2) If raw odor evaluation indicates any noncharacteristic and/or off-odors, the sample unit or parts thereof shall be cooked by any of the following methods for verification of results of raw odor evaluation:

(i) Baked method. Package the product in aluminum foil. Place the packaged product on a flat cookie sheet or shallow flat-bottom pan of sufficient size so that the packages can be evenly spread on the sheet or pan. Place the pan and frozen contents in a properly ventilated oven preheated to 400° F until the internal temperature of the product reaches 160° F.

(ii) Boil in bag method. Insert the thawed unseasoned sample into a boilable film-type pouch. Fold open end of the pouch over a suspension bar. Clamp in place to provide a loose seal after evacuating the air by immersing the pouch into boiling water. Cook the contents until the internal temperature of the product reaches 160°F.

(iii) Steam method. Wrap the sample in a single layer of aluminum foil and place on a wire rack suspended over boiling water in a covered container. Steam the packaged product until the internal temperature of the product reaches 160°F.

(d) *Examination for physical defects:* Each sample unit shall be examined for defects using the list of defect definitions that follow. Defects will be categorized as minor, major, and serious according to Table 1 of this standard.

(e) *Definition of defects in fillets:* (1) "Abnormal condition" means that the normal physical and/or chemical structure of the fish flesh has been sufficiently changed so that the usability and/or desirability of the flesh is adversely affected. It includes but is not limited to the following:

(i) Jellied—refers to the abnormal condition wherein a fish fillet is partly or wholly characterized by a gelatinous, glossy, translucent appearance.

(ii) Milky—refers to the abnormal condition wherein a fish fillet is partly or wholly characterized by a milky-white, excessively mushy, pasty, or fluidized appearance.

(iii) Chalky—refers to an abnormal condition wherein a fish fillet is partly or wholly characterized by a dry, chalky, granular appearance, and fiberless structure.

The intensity of abnormal conditions is defined as follows:

(A) Moderate—refers to a condition that is distinctly noticeable but does not seriously affect the appearance, desirability, and/or the eating quality of the product.

(B) Excessive—refers to a condition which is both distinctly noticeable and seriously objectionable.

(2) Appearance defect—refers to the color of the fish flesh and to the degree of surface dehydration of the product.

(i) Color defect—refers to any readily discernable abnormal coloration including bruises, blood spots, browning, yellowing, and melanin spotting. Each square inch (6.5 cm^2) of affected area is counted as one instance as determined by a transparent grid of 1 inch squares.

The extent of appearance defects is defined as follows:

(A) Slight—2-4 instances.

(B) Moderate—5-6 instances.

(C) Excessive—over 6 instances.

(ii) Dehydration—refers to loss of moisture from fish fillet surfaces during frozen storage.

(A) Slight dehydration—is surface color masking affecting more than 5 percent of surface area which can be readily removed by scraping with a blunt instrument.

(B) Moderate dehydration—is deep color masking penetrating the flesh affecting less than 5 percent, but more than 1 percent of surface area and requiring a knife or other sharp instrument to remove.

(C) Excessive dehydration—is deep color masking penetrating the flesh affecting more than 5 percent of surface area and requiring a knife or other sharp instrument to remove.

(3) Workmanship defects refer to:

(i) Cutting and trimming imperfections, ragged edges, holes, tears, and improper or misplaced cuts. Each square inch (6.5 cm^2) of affected area is counted as one instance whether it is full or fractional. "Ragged edges" refers to the irregular or shredded appearance of the fillet edge.

(ii) Scales, fins, or pieces of fins or extraneous material.

(A) Scales (skin-off) scaled fillets—An occurrence of attached or loose scales in any sample unit up to 1 square inch (6.5 cm^2) is counted as one instance. Each additional 1 square inch (6.5 cm^2) is an additional instance.

(B) Fins—Any fin or parts of any fin up to 1 square inch (6.5 cm^2) in area shall be considered one instance of fin.

(C) Extraneous material means any piece of foreign matter on the fillet or elsewhere in the package. Each occurrence is considered one instance.

The extent of workmanship defects is defined as follows:

Slight degree—1-2 instances.

Moderate degree—3-4 instances.

Excessive degree—over 4 instances.

(4) Bone—refers to a bone, or piece of bone, that exceeds either the di-

mension 15 mm in length or 0.355 mm in diameter. Each area of one inch square (6.5 cm^2) which contains a bone or a cluster of bones shall be regarded as one instance of bones. The amount of bones is defined as follows:

Slight—1 instance.
Moderate—2-4 instances.
Excessive—over 4 instances.

(5) Skin—includes exterior skin and black membrane (belly lining).

(i) For skinless fillets, each piece of skin up to 1 square inch (6.5 cm^2) and every additional complete 1 square inch (6.5 cm^2) thereafter shall be considered an instance.

(ii) In the case of skin-on or skinless fillets, each piece of black membrane (belly lining) up to 1 square inch (6.5 cm^2) thereafter shall be considered an instance.

The amount of skin is defined as follows:

Slight degree—1 instance.
Moderate degree—2-4 instances.
Excessive degree—over 4 instances.

(6) Size of fillets—refers to the freedom from undesirably small pieces of fillets. Undesirably small shall mean any piece of fillet weighing less than 1 ounce (30 grams) per container. Moderate degree—2 pieces. Excessive—over 2 pieces.

(7) "Texture defects"—refers to the texture of the cooked fish being not characteristic of the species.

(i) Slight—fairly firm, does not form a fibrous mass in the mouth, moist but not mushy.

(ii) Moderate—moderately tough or rubbery, has noticeable tendency to form a fibrous mass in the mouth, moist but not mushy.

(iii) Excessive—excessively tough or rubbery, has marked tendency to form a fibrous mass in the mouth, or is very dry or very mushy.

(f) *Categorization of physical defects.* Instances shall be assessed on a per pound basis for physical defects, except for defects relating to abnormal conditions, texture, dehydration and sizes of fillets.

TABLE 1.—DEFECT TABLE

Defect description	Classification		
	Minor	Major	Serious
1. Abnormal Condition:			
Moderate		2	
Excessive			4
2. Appearance:			
(a) Color defects:			
Slight (2-4 instances)	1		
Moderate (5-6 instances)		2	
Excessive (over 6 instances)			4
(b) Dehydration:			
Slight (surface < 5% of area)	1		
Moderate (deep 1 to 5% of area)		2	
Excessive (deep >5% of area)			4
3. Workmanship defects:			
(a) Cutting and trimming:			
Slight (1-2 instances)	1		
Moderate (2-4 instances)		2	
Excessive (over 4 instances)			2
(b) Scales, fins, extraneous material:			
Slight (1-2 instances)	1		
Moderate (3-4 instances)		2	
Excessive (over 4 instances)			2
4. Bones:			
Slight (1 instance)	1		
Moderate (2-4 instances)		2	
Excessive (over 4 instances)			4
5. Skin and Membrane:			
Slight (1 instance)	1		
Moderate (2-4 instances)		2	
Excessive (over 4 instances)			2
6. Size of Fillets:			
Moderate (2 instances)		2	
Excessive (over 4 instances)			2

TABLE 1.—DEFECT TABLE—Continued

Defect description	Classification		
	Minor	Major	Serious
7. Texture:			
Slight	1		
Moderate		2	
Excessive			4

TOLERANCES FOR VARIOUS DEFECTS

Combined minor and major defects	Serious defects	Group species[1]
U.S. Grade A:		
Up to 4 points	None	Groundfish.
Up to 5 points	do	Flatfish.
Up to 6 points	do	All others.
U.S. Grade B:		
Up to 8 points	do	Groundfish.
Up to 10 points	do	Flatfish.
Up to 12 points	do	All others.
U.S. Grade C:		
Up to 10 points	Up to 8 points	Groundfish.
Up to 12 points	do	Flatfish.
Up to 14 points	do	All others.

[1] Groundfish (white fish) includes cusk, ocean catfish, pollock, hake, whiting, and ling.
Flatfish includes Greenland turbot and halibut.

(g) *Grade Assignment:* Each sample unit will be assigned the grade into which it falls in accordance with the tolerance contained in Table 1 for Group Species. The grade to be assigned a lot is the grade indicated by the average of the total scores, provided the number of sample units in the next lower grade for both physical defects and flavor and odor does not exceed the acceptance number as indicated in the sampling plans contained in § 260.61.

Subpart B—United States Standards for Grades of Cod Fillets

§ 263.151 Product description.

The product described in this part consists of clean, whole, wholesome fillets or primarily large pieces of clean, whole, wholesome fillets, cut away from either side of cod, Gadus morhua or gadus macrocephalus; the fillets may be either skinless or with skin on. They are packaged in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product. (This part does not provide for the grading of pieces of fish flesh cut away from previously frozen fish blocks, slabs, or similar products.

§ 263.152 Grades of cod fillets.

(a) "U.S. Grade A" is the quality of cod fillets that possess good flavor and odor; and for those factors of quality which are rated in accordance with the scoring system outlined in this part the total score is not less than 85 points.

(b) "U.S. Grade B" is the quality of cod fillets that possess at least reasonably good flavor and odor; and for those factors of quality which are rated in accordance with the scoring system outlined in this part the total score is not less than 70 points.

(c) "Substandard" is the quality of cod fillets that fail to meet the requirements of U.S. Grade B.

§ 263.154 Product forms.

(a) Types:

(1) Fresh.

(2) Frozen, solid pack; glazed and unglazed.

(3) Frozen individually; glazed or unglazed.

(b) Styles:

(1) Skin on.

(2) Skinless.

§ 263.156 Recommended weights and dimensions.

(a) The recommendations as to net weights and dimensions of packaged cod fillets are not incorporated in the grades of the finished product since net weights and dimensions, as such, are not factors of quality for the purpose of these grades.

(b) It is recommended that the net weights of the packaged frozen cod fillets be not less than 12 ounces and not over 10 pounds.

§ 263.161 Ascertaining the grade.

The grade of cod fillets is ascertained by examining the product in the fresh or frozen, thawed, and cooked states. The following factors of quality are evaluated in ascertaining the grade of the product: Flavor and odor, appearance, size, absence of defects, and character. These factors are rated in the following manner:

(a) *Flavor and odor.* This factor is rated directly by organoleptic evaluation. Score points are not assessed (see § 263.162).

(b) *Appearance, size, absence of defects, and character.* The relative importance of these factors is expressed numerically on the scale of 100. The maximum number of points that may be given each of these factors are:

Factors	Points
Appearance	25
Size	20
Absence of defects	40
Character	15
Total possible score	100

§ 263.162 Evaluation of the unscored factor of flavor and odor.

(a) *Good flavor and odor.* "Good flavor and odor" (essential requirement for a Grade A product) means that the fish flesh has good flavor and odor characteristic of cod (Gadus morhua or Gadus macrocephalus) and is free from staleness, and off-flavor and off-odors fo any kind.

(b) *Reasonably good flavor and odor.* "Reasonably good flavor and odor" (minimum requirement of a Grade B product) means that the fish flesh may be somewhat lacking in good flavor and odor; and is free from objectionable off-flavors and off-odors of any kind.

§ 263.163 Evaluation and rating of the scored factors; appearance, size, absence of defects, and character.

The essential variations in quality within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. Point deductions are allotted for each degree or amount of variation within each factor. The net score for each factor is the maximum points for that factor less the sum of the deduction-points within the factor. The total score for the product is the sum of the net scores for the four scored factors.

§ 263.164 Appearance.

(a) The factor of appearance refers to the normal color of the species of fresh or frozen fish flesh, and to the degree and amount of surface dehydration of the frozen product.

(b) For the purpose of rating the factor of appearance the schedule of deduction-points in Tables I and II apply Frozen cod fillets which receive 25 deduction points for the factor of appearance shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE I—SCORE DEDUCTIONS FOR DISCOLORATION

Color of product	Deduction points	
	"Light colored portion comprising main portion of fillet	"Dark" colored portion occurring under skin mainly along lateral line
No discoloration	0	0
Slight yellowing	2	1
Moderate yellowing	4	2
Excessive yellowing and/or any rusting	13	12

TABLE II—SCORE DEDUCTIONS FOR DEHYDRATION

Degree of dehydration of frozen product	Surface area affected (percent)		Deduction points
	Over—	Not over—	
Slight—Shallow and not color masking.	0	1	0
	1	50	2
	50	100	5
Moderate—Deep but just deep enough to easily scrap off with fingernail.	1	25	5
	25	50	8
	50	100	16
Excessive—Deep dehydration not easily scraped off.	1	25	12
	25	100	25

§ 263.165 Size.

(a) The factor of size refers to the degree of freedom from undesirably small fillet pieces. Any fillet piece weighing less than 2 ounces is classed as being undersirably small.

(b) For the purpose of rating the factor of size the schedule of deduction-points in Table III apply. Cod fillets which receive 20 deduction points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE III—SCORE DEDUCTIONS FOR SIZE OF FILLET PIECES

Number of fillet pieces less than 2 ounces per pound		Deduction points
Over—	Not over—	
	0	0
0	1	1
1	2	10
2	3	15
3	4	20

§ 263.166 Workmanship defects.

(a) The factor of "workmanship defects" refers to the degree of freedom from improper packing, cutting and trimming imperfections, blemishes, and bones. Evaluation for the defect of improper packing is made on the frozen product. Evaluation of the defects of cutting and trimming, blemishes, and bones are made on the thawed product.

(1) *Improper packing.* "Improper packing" means poor arrangement of fillets, presence of voids, depressions, frost, and the imbedding of packaging material into the frozen fish flesh.

(2) *Cutting and trimming imperfections.* "Cutting and trimming imperfections" means that the fillets have ragged edges, tears, holes, or are otherwise improperly cut or trimmed.

(3) *Blemish.* "Blemish" means an instance of skin (except for skin-on fillets), scales, blood-spot, bruise, black-belly lining, fin, or extraneous material. One "instance of skin" consists of one piece of skin not less than ½ square inch and not more than 1½ square inches in area; each additional ½ square inch area of individual skin pieces greater and 1½ square inches is considered as an additional instance. One "instance of blood spot" is one of such size and prominence as to be considered objectionable. One "instance of black-belly lining" is any piece of black-belly lining not less than ½ inch and not more than 1 inch in length; each additional ½ inch length of individual pieces of black-belly lining longer than 1 inch is considered as an instance. Each aggregate area of identifiable fin or parts of any fin up to 1 square inch is considered as one "instance of fin". Each aggregate area up to 1 square inch per fillet of one scale or group of scales is considered as one "instance of scales". An "instance of bruise" consists of a bruise not less than ½ square inch and not more than 1½ square inches in area; each bruise larger than 1½ square inches is considered as two instances of bruise.

(4) *Bones.* One "instance of bone" means one bone or one group of bones occupying or contacting a circular area up to 1 square inch.

(b) For the purpose of rating the factor of "absence of defects" the schedule of deduction-points in Table IV apply.

TABLE IV—SCORE DEDUCTIONS FOR WORKMANSHIP DEFECTS

Defects subfactors	Method of determining subfactor score	Deduction points
Improper packing.	Moderate defects, noticeably affecting the product's appearance.	2
	Excessive defects, seriously affecting product's appearance.	4
Blemishes	Number of blemishes per 1 lb. of fish flesh:	
	Over 0 not over 1	1
	Over 1 not over 2	3
	Over 2 not over 3	5
	Over 3 not over 4	8
	Over 4 not over 5	12
	Over 5 not over 6	16
	Over 6 not over 7	30
	Over 7	40
Bones	Number of instances per 1 lb. of fish flesh:	
	Over 0 not over 1	0
	Over 1 not over 2	2
	Over 2 not over 3	4
	Over 3 not over 4	6
	Over 4 not over 5	8
	Over 5 not over 6	14
	Over 6 not over 7	30
	Over 7	40
Cutting and trimming.	Slight defects, scarcely noticeable.	0
	Moderate defects, noticeable but not affecting the usability of any fillets.	45
	Excessive defects impairing:	
	(a) the usability of up to ¼ of the total number of fillets.	8
	(b) the usability of over ¼ but not more than ½ of the total number of fillets.	16
	(c) the usability of over ½ of the total number of fillets.	40

§ 263.167 Character.

(a) The factor of character refers to the amount of free drip in the thawed fillets, and to the tenderness and moistness of the cooked fish flesh.

(b) For the purpose of rating the factor of character, the schedule of deduction-points in Table V apply. Cod fillets which receive 15 deduction-points for the factor of character shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE V—SCORE DEDUCTIONS FOR CHARACTER

Character subfactors	Method of determining subfactor score	Deduction points
Texture	Texture of the cooked fish:	
	(a) Firm, slightly resilient but not tough or rubbery; moist but not mushy.	0
	(b) Moderately firm; only slightly tough or rubbery; does not form a fibrous mass in the mouth; moist but not mushy.	4
	(c) Moderately tough or rubbery; has noticeable tendency to form a fibrous mass in the mouth; or is dry; or is mushy.	8
	(d) Excessively tough or rubbery; has marked tendency to form a fibrous mass in the mouth; or is very dry; or is very mushy.	15
Drip	Percent of drip:	
	Over 0 not over 5	0
	Over 5 not over 6	1
	Over 6 not over 8	2
	Over 8 not over 10	4
	Over 10 not over 12	6
	Over 12 not over 14	9
	Over 14 not over 16	12
	Over 16	15

§ 263.171 Definitions and methods of analysis.

(a) *Percent of drip.* "Percent of drip" means the percent by weight of "free drip" (the fluid which is not reabsorbed by the fish tissue when the frozen fish thaws, and which separates freely without the aid of any external forces except gravity) in an individual package as determined by the following method:

(1) *Apparatus and materials.* (i) Water bath.

(ii) Balance, accurate to 0.1 gm; or 0.01 ounce.

(iii) Pliable and impermeable bag (cryovac, pliofilm, etc.).

(iv) Corrosion resistant metal rod weight (preferably stainless steel or monel metal), measuring 3½ inches in length and approximately ¼-½ inch in diameter.

(v) U.S. Standard No. 8 mesh circular sieve (both 8 and 12 inch diameters).

(vi) Stirring motor.

(vii) Identification tags.

(2) *Procedure.* (i) Place metal rod weight into an empty pliable bag.

(ii) Weigh the bag and the metal weight.

(iii) Remove the frozen fish material from the container (container consists of the carton and the inner and outer wrapping).

(iv) Place the frozen product, plus scraps of any material remaining in the container, into the pliable bag.

(v) Weigh the bag and its contents and subtract tare (empty bag and metal weight) to determine the net weight of the product.

(vi) Suspend the bag and contents in an agitated water bath maintained at 68° F. plus or minus 2° F. The bag should be suspended in the water so that the fish flesh is below the water line.

(vii) Allow the bag and its contents to remain immersed until the product is defrosted (a "test run", in advance, is necessary to determine time required for each product and quantity of product.)[1]

(viii) Remove bag and contents from bath and gently dry outside of bag.

(ix) Weigh dry U.S. Standard No. 8 mesh circular sieve.

(x) Open bag and empty contents onto U.S. Standard No. 8 circular sieve so as to distribute the product evenly, inclining the sieve slightly to facilitate drainage, and allowing to drain for 2 minutes.

(xi) Weigh sieve and its contents and calculate drained weight. The drained weight is the weight of sieve and fillets less the weight of the dry sieve.

(xii) Calculate percent drip:

Net weight (v)−drained weight (xi)×(100)/
Net weight (v)=Percent of drip

(b) *Cooking in a suitable manner.* "Cooking in a suitable manner" shall means that the product is cooked as follows: Place the thawed unseasoned product into a boilable film-type pouch; fold the open end of the pouch over the suspension bar and clamp in place to provide a loose seal. Immerse the pouch and its contents in boiling water and cook until the internal temperature of the fillets reaches 160° F. (about 20 minutes).

§ 263.175 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 Subpart A of this chapter. (Regulations Governing Processed Fishery Products.)

SCORE SHEET

§ 263.181 Score sheet for cod fillets.

Label ....
Size and kind of container ....
Container mark or identification ....
Size of lot ....
Number of packages per master carton ....
Size of sample ....
Type of overwrap ....
Actual net weight: ———(lb.) ———(kg.)..........

Factor	Score points	Sample score
Appearance	25	....
Size	20	....
Absence of defects	40	....
Character	15	....
Total	100	....

Flavor and odor ....
Final grade ....

Subpart C—United States Standards for Grades of Flounder and Sole Fillets

§ 263.201 Description of the product.

Frozen flounder and sole fillets consist of clean, wholesome fillets processed and frozen in accordance with good commercial practice and maintained at temperatures necessary for their preservation. The fillets may be cut transversely or longitudinally into subunits.

NOTE: This standard does not provide for the grading of units of fish flesh cut from previously frozen fish blocks, slabs, or similar material.

The product covered by this standard is prepared from the following species only:

SOLE

Dover sole (Microstomus pacificus).
English sole (Parophrys vetulus).

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[1] The purpose of the "test run" is to determine the time necessary to thaw the product. The complete thawing of the product is determined by frequent but gentle squeezing of the bag until no hard core or ice crystals are felt. This package which has been squeezed cannot be used for drained weight calculations.

Gray sole (Glyptocephalus cynoglossus).
Petrale sole (Eopsetta jordani).
Lemon sole (Pseudopleuronectes americanus, over 3½ pounds).
Rock sole (Lepidopsetta bilineata).
Sand sole (Psettichthys melanostictus).

FLOUNDER

Blackback (Pseudopleuronectes americanus, less than 3½ pounds).
Yellowtail flounder (Limanda ferruginea).
Dab, plaice (Hippoglossoides platessoides).
Fluke (Paralichthys dentatus).
Starry flounder (Platichtys stellatus).

§ 263.202 Product forms.

(a) Types:
(1) Fresh,
(2) Frozen solid packs; glazed or unglazed,
(3) Frozen individually; glazed or unglazed.
(b) Styles:
(1) Skin on,
(2) Skin on, white side only,
(3) Skinless.

§ 263.203 Grades of frozen flounder and sole fillets.

(a) "U.S. Grade A" is the quality of frozen flounder or sole fillets for which the total score is not less than 85 points, when the fillets are rated in accordance with the scoring system outlined in the following sections.

(b) "U.S. Grade B" is the quality of frozen flounder or sole fillets for which the total score is less than 85 points but is not less than 70 points, when the fillets are rated in accordance with the scoring system outlined in the following sections.

(c) "Substandard" is the quality of frozen flounder or sole fillets that fail to meet the requirements of the U.S. Grade B.

§ 263.211 Determination of the grade.

The grade is determined by observing the product in the frozen, thawed, and cooked states and is evaluated by numerical scoring. Points are deducted for variations of quality for each factor in accordance with the schedule in Table 1. The total of the points deducted is subtracted from 100 to obtain the score. The maximum score is 100; the minimum score is 0.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER POUND OF FLOUNDER OR SOLE FILLETS AND GRADING SCORE SHEET

Scored factors	Description of quality variation	Deduct	Deductions
	FROZEN		
1. Appearance	Adversely affected by imbedded packaging material, voids, depressions, surface irregularity, and poor arrangements of fillets:		
	Slight	2	
	Moderate	4	
	Excessive	10	
2. Dehydration	For each inch square (determined by grid) of affected area:		
	Color masking, easily scraped off	½	
	Deep, not easily scraped off	1	
	THAWED		
3. Weights	(a) For each fillet or piece less than 1 oz., except first fillet or piece	5	
	(b) For sole only: For each fillet from 1–2 oz., except first fillet	2	
	For flounder only: For each fillet from 1–2 oz., except first three fillets	2	
4. Workmanship defects	For each inch square (determined by grid) of affected area:		
	(a) Cutting and trimming (ragged edges holes, tears, improper or unnecessary cuts and lace).	½	
	(b) Blemishes (belly lining, blood spots, bruises, extraneous material, fins, discolored pugh marks, scales and skin).	2	
	(c) Bones normally removed	3	
5. Color	(a) Deteriorative discoloration (yellowing of fatty portion and/or darkening of light portion).	3	
	Slight	2	

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER POUND OF FLOUNDER OR SOLE FILLETS AND GRADING SCORE SHEET—Continued

Scored factors	Description of quality variation	Deduct	Deductions
	Moderate	5	
	Excessive	15	
	(b) Nonuniformity of color (natural color differences within package due to packing fish of contrasting color):		
	Moderate	3	
	Excessive	5	
6. Abnormal condition	Usability and/or desirability of fillets impaired by abnormal conditions (jellied, milky, chalky):		
	Moderate	16	
	Excessive	31	
COOKED			
7. Texture	Tough, dry, fibrous, or watery for species involved:		
	Slight	4	
	Moderate	8	
	Excessive	15	
8. Odor and flavor	Very good: Full typical odor and flavor of fresh fish		
	Good: Noticeable decrease in typical odor and flavor of fresh fish	6	
	Reasonably good: Lacking typical odor and flavor of fresh fish, but not objectionable.	16	
	Substandard: Objectionable odor and/or flavor	31	

Total deductions
Score (100 minus total deductions)
Grade (100 to 85=Grade A; 84 to 70=Grade B; 69 and below=Substandard)

Label
Size of lot
Size of sample
Number of packages per master carton
Remarks

Actual net weight.........lb.........oz
Size and kind of container
Container mark or identification
Type of overwrap

§ 263.221 Definitions.

(a) "Slight" refers to a condition that is scarcely noticeable but that does affect the appearance, desirability, and/or eating quality of the fillets.

(b) "Moderate" refers to a condition that is conspicuously noticeable but that does not seriously affect the appearance, desirability, and/or eating quality of the fillets.

(c) "Excessive" refers to a condition that is conspicuously noticeable and that does seriously affect the appearance, desirability and/or eating quality of the fillets.

(d) "Bones normally removed" refers to (1) nape membrane bones (adjacent to visceral cavity) and to (2) radial bones (adjacent to fins and lace area).

(e) "Determined by grid" means that a transparent grid of 1-inch squares is placed over the defect area, and points are deducted (as specified in Table 1) for each square of affected area under the grid, each square being counted as one whether it is full or fractional.

(f) "Thawed state" means that the frozen product has been placed within a film-type pouch and warmed to an internal temperature of about 32° F by immersing the pouch in running tap water of about 50° to 70° F. Thawing time usually takes 25 to 45 minutes for a 1-pound package.

(g) "Cooked state" means that the thawed, unseasoned product has been placed within a boilable film-type pouch and heated to an internal temperature of about 160° F by immersing the pouch in boiling water. Cooking time usually ranges from 3 to 5 minutes for single fillets and from 7 to 10 minutes for 1-pound packages of fillets.

(h) "Actual net weight" means the weight of the fish flesh within the package after all packaging material, ice glaze, or other protective coating have been removed. ("Actual net weight" of frozen glazed fillets is determined as follows:

(1) Rapidly remove excessive ice layers or pockets with running tap water or nozzle-type water spray.

(2) Rapidly thaw remaining surfaces of frozen fish sufficiently with tap water or spray to prevent refreezing free surface water.

(3) Gently wipe off all free water with a moisture-saturated paper towel.

(4) Weigh the fish to obtain "actual net weight".)

(i) "Abnormal condition" means that the normal physical and/or chemical structure of the fish flesh has been sufficiently altered so that the usability and/or desirability of the fillet is adversely affected. It includes, but is not limited to, the following examples:

(1) "Jellied" refers to the abnormal condition wherein a fillet is partly or wholly characterized by a gelatinous glossy, translucent appearance, feels slimy to the touch, and retains its gelatinous, slimy properties in the cooked state.

(2) "Milky" refers to the abnormal condition wherein a fillet is partly or wholly characterized by a milky-white, excessively mushy, pasty, or fluidized appearance.

(3) "Chalky" refers to the abnormal condition wherein a fillet is partly or wholly characterized by a dry, chalky granular appearance and fiberless structure.

(j) "Odor and flavor" is classified as follows:

(1) "Very good": Fish in this category have essentially the full, good, typical odor, and flavor of the indicated species.

(2) "Good": Fish in this category show a noticeable decrease of the good typical odor and flavor of the indicated species, and/or may have certain less acceptable natural environmental odors and flavors of slight intensity (iodoform-type, phenolic-type, feed-type, etc.), but may have no off odors and flavors.

(3) "Reasonably good": Fish in this category may be flat, or completely lacking in the good, typical odor and flavor of the indicated species, and/or may have certain less acceptable natural environmental odors and flavors of moderate intensity (iodoform-type, phenolic-type, feed-type, etc.), but may have no objectionable odors and flavors.

(4) "Substandard": Fish in this category have odors and flavors that are objectionable.

§ 263.225 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260, Subpart A of this chapter. (Regulations Governing Processed Fishery Products.)

Subpart D—United States Standards for Grades of Haddock Fillets

§ 263.251 Product description.

The product described in this part consists of clean, whole, wholesome fillets or primarily large pieces of clean, whole, wholesome fillets, cut away from either side of haddock, Melanogrammus aegiefinus; the fillets may be either skinless or with skin on. They are packaged in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product. (This part does not provide for the grading of pieces of fish flesh cut away from previously frozen fish blocks, slabs, or similar products.)

§ 263.252 Grades of frozen haddock fillets.

(a) "U.S. Grade A" is the quality of haddock fillets that possess a good flavor and odor; and for those factors which are rated in accordance with the scoring system outlined in this part have a total score of 85 to 100 points.

(b) "U.S. Grade B" is the quality of haddock fillets that possess at least a reasonably good flavor and odor; and for those factors which are rated in accordance with the scoring system outlined in this part have a total score of not less than 70 points: *Provided,* That no factor receives maximum point score deduction.

(c) "Substandard" is the quality of haddock fillets that fail to meet the requirements of U.S. Grade B.

§ 263.254 Product forms.

(a) Types:

(1) Fresh,

(2) Frozen, solid pack; glazed and unglazed.

(3) Frozen individually; glazed or unglazed.

(b) Styles:

(1) Skin on,

(2) Skinless.

§ 263.256 Recommended weights and dimensions.

(a) The recommendations as to net weights and dimensions of packaged haddock fillets are not incorporated in the grades of the finished product since net weights and dimensions, as such, are not factors of quality for the purpose of these grades.

(b) It is recommended that the net weights of the packaged haddock fillets be not less than 12 ounces and not over 10 pounds.

§ 263.261 Ascertaining the grade.

The grade of haddock fillets is ascertained by observing the product in the frozen and thawed states and after representative sample units have been cooked in a suitable manner. The following factors are evaluated in ascertaining the grade of the product: Flavor, odor, appearance, size, defects, and character.

(a) These factors are rated in the following manner:

(1) *Flavor and odor.* These factors are rated by organolepic examination. Score points are not assessed (see § 263.262).

(2) *Appearance, size, defects, and character.* These factors are rated by score points expressed numerically on the scale of 100.

(b) The four factors and the maximum number of points that may be given each are as follows:

Factors	Points
Appearance	25
Size	20
Defects	40
Character	51
Total score	100

§ 263.262 Evaluation of the unscored factor of flavor and odor.

(a) *Good flavor and odor.* "Good flavor and odor" (essential requirement for a Grade A product) means that the fish flesh has good flavor and odor characteristic of haddock (Melanogrammus aeglefinus); and is free from staleness, and off-flavors and off-odors of any kind.

(b) *Reasonably good flavor and odor.* "Reasonably good flavor and odor" (minimum requirement of a Grade B product) means that the fish flesh may be somewhat lacking in good flavor and odor; and is free from objectionable off-flavors and off-odors of any kind.

§ 263.263 Ascertaining the rating for the factors which are scored; appearance, size, workmanship defects, and character.

The essential variations within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. Point deductions are allotted for each degree or amount of variation within each factor. The value for each factor is the maximum points allotted for the factor less the sum of the deduction-points within the factor.

§ 263.264 Appearance.

(a) General: The factor of appearance refers to the color of the fish flesh, and to the degree of surface dehydration of the product.

(b) For the purpose of rating the factor of appearance the schedule of deduction-points in Tables I and II apply. Haddock fillets which receive 25 deduction-points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE I—SCORE DEDUCTIONS FOR COLOR SUBFACTOR

Color	Deduction points	
	"Light" colored portion comprising main portion of fillet	"Dark" colored portion occurring under skin mainly along lateral line
No descoloration	0	0
Slight yellowing	2	1
Moderate yellowing	4	2
Excessive yellowing and/or any rusting	13	12

TABLE II—SCORE DEDUCTIONS FOR DEHYDRATION SUBFACTOR

Degree of dehydration	Surface area affected (percent)		Deduction points
	Over—	Not over—	
Slight—Shallow and not color masking.	0	1	0
	1	50	2
	50	100	5
Moderate—Deep but just deep enough to easily scrape off with fingernail.	1	25	5
	25	50	8
	50	100	16
Excessive—Deep dehydration not easily scraped off.	1	25	12
	25	100	25

§ 263.265 Size.

(a) General: The factor of size refers to the degree of freedom from undesirably small fillet pieces. Any piece weighing less than 2 ounces is classed undesirably small.

(b) For the purpose of rating the factor of size the schedule of deduction-points in Table III apply. Haddock fillets which receive 20 deduction points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE III—SCORE DEDUCTIONS FOR SIZE OF FILLET PIECES

Number of fillet pieces less than 2 ounces per pound		Deduction points
Over—	Not over—	
	0	0
0	1	1
1	2	10
2	3	15
3	4	20

§ 263.266 Workmanship defects.

(a) General: The factor of workmanship defects refers to the degree of freedom from improper packing, cutting and trimming imperfections, blemishes, and bones.

(1) *Improper packing.* "Improper packing" means poor arrangement of fillets, presence of voids, depressions, frost, and the imbedding of packaging material into fish flesh.

(2) *Cutting and trimming imperfections.* "Cutting and trimming imperfections" means that the fillets have ragged edges, tears, holes, or are otherwise improperly cut or trimmed.

(3) *Blemish.* "Blemish" means a piece of skin (except for skin-on fillets), scales, blood spot, a bruise, a black belly lining, a fin, or extraneous material. One "piece of skin" consists of one piece at least ½ square inch in area, except that any skin patches larger than 1½ square inches are each considered as two pieces of skin. "Blood spot" is one of such size and prominence as to be considered objectionable. "Black belly lining" is any piece longer than ½ inch. Each aggregate area up to 1 square inch of identifiable fin or parts of any fin is considered as one "instance of fin". Each aggregate area up to 1 square inch per fillet of one scale or group of scales is considered one "instance of scales". "A bruise" consists of an affected area of ½ square inch or more in area: except that any bruise larger than 1½ square inches is considered as two bruises.

(4) *Bones.* "Bones" means any bones that can be identified and are objectionable. One instance of bone means one bone or one group of bones occupying or contacting a circular area of 1 square inch.

(b) For the purpose of rating the factor of freedom from defeats, the schedule of deduction-points in Table IV apply.

TABLE IV—SCORE DEDUCTIONS FOR WORKMANSHIP DEFECTS

Defects subfactors	Method of determining subfactor score	Deduction points
Improper packing.	Moderate defects, noticeably affecting the products appearance.	2
	Excessive defects, seriously affecting products appearance.	4
Blemishes	Number of blemishes per 1 lb. of fish flesh:	
	Over 0 not over 1	1
	Over 1 not over 2	3
	Over 2 not over 3	5
	Over 3 not over 4	8
	Over 4 not over 5	16
	Over 5 not over 6	30
	Over 6	40
Bones	Number of instances per lb. of fish flesh:	
	Over 0 nor over 1	0
	Over 1 not over 2	5
	Over 2 not over 3	10
	Over 3 not over 4	15
	Over 4 not over 5	30
	Over 5	40
Cutting and trimming.	Slight defects, scarcely noticeable.	0
	Moderate defects, noticable but not affecting the useability of any fillets.	4
	Excessive defects impairing:	
	(a) the useability of up to ¼ of the total number of fillets.	8
	(b) the useability of over ¼ but not more than ½ of the total number of fillets.	16
	(c) the useability of over ½ of the total number of fillets.	40

§ 263.267 Character.

(a) General: The factor of character refers to the amount of drip in the thawed fillets, and to the tenderness and moistness of the properly cooked fish flesh.

(b) For the purpose of rating the factor of character, the schedule of deduction-points in Table V apply. Haddock fillets which receive 15 deduction points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE V—SCORE DEDUCTIONS FOR CHARACTER

Character subfactors	Method of determining subfactor score	Deduction points
Texture	Texture of the cooked fish:	
	(a) Firm, slightly resilient but not tough or rubbery; moist but not mushy.	0
	(b) Moderately firm; only slightly tough or rubbery; does not form a fibrous mass in the mouth; moist but not mushy.	4
	(c) Moderately tough or rubbery; has noticeable tendency to form a fibrous mass in the mouth; or is dry; or is mushy.	8
	(d) Excessively tough or rubbery; has marked tendency to form a fibrous mass in the mouth; or is very dry; or is very mushy.	15
Amount of drip	Percent of drip:	
	Over 0 not over 5	0
	Over 5 not over 6	1
	Over 6 not over 8	2
	Over 8 not over 10	4
	Over 10 not over 12	6
	Over 12 not over 14	9
	Over 14 not over 16	12
	Over 16	15

§ 263.271 Definitions and methods of analysis.

(a) *Percent of drip.* "Percent of drip" means the percent by weight of "free drip" (the fluid which is not reabsorbed by the fish tissue when the frozen fish thaws, and which separates freely without the aid of any external forces except gravity) in an individual package as determined by the following method:

(1) *Apparatus and materials.* (i) Water bath.

(ii) Balance, accurate to 0.1 gm; or 0.01 ounce.

(iii) Pliable and impermeable bag (cryovac, pliofilm, etc.).

(iv) Vacuum source (Vacuum pump or water aspirator).

(v) U.S. Standard No. 8 mesh circular sieve (both 8 and 12 inch diameters).

(vi) Stirring motor.

(vii) Identification tags.

(2) *Procedure.* (i) Weight pliable and impermeable bag (cryovac, pliofilm, etc.).

(ii) Remove frozen material from container (container consists of the carton and the inner and outer wrappings).

(iii) Place frozen product, plus scraps of any material remaining on the container, into the pliable bag.

(iv) Weigh bag and contents and subtract tare to determine the net weight of the product.

(v) Evacuate air from bag by use of suction so that bag closely fits contour of product, with no air pockets.

(vi) Crimp the open end of bag and tie off (a secure and leakproof closure may be created by tying close to product and then folding excess bag and tying again).

(vii) Completely immerse bag and contents in a circulated water bath maintained at 68° F. plus or minus 2° F.

(viii) Allow to remain immersed until the product is defrosted (a "test run" in advance, is necessary to determine time required for each product and quantity of product).[1]

(ix) Remove bag and contents from bath and gently dry outside of bag.

(x) Weigh dry U.S. Standard No. 8 mesh circular sieve.

(xi) Open bag and empty contents onto U.S. Standard No. 8 circular sieve so as to distribute the product evenly, inclining the sieve slightly to facilitate drainage, and allowing to drain for two minutes.

(xii) Weigh sieve and its contents and calculate drained weight. The drained weight is the weight of the sieve and fillets less the weight of the dry sieve.

(xiii) Calculate percent drip:

Net weight (iv) − drained weight (xii) × (100)/ Net weight = Percent of drip

(b) *Cooking in a suitable manner.* "Cooking in a suitable manner" shall mean that the product is cooked as follows: Place the thawed unseasoned product into a boilable film-type pouch. The pouch and its contents are then immersed in boiling water and cooked until the internal temperature of the fillets reaches 160° F. (about 20 minutes).

§ 263.275 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 Subpart A of this chapter. (Regulations Governing Processed Fishery Products.)

§ 263.281 Score sheet for haddock fillets.

Label ....
Size and kind of container ....
Container mark or identification ....
Size of lot ....
Number of packages per master carton ....
Size of sample ....
Type of overwrap ....
Actual net weight———————(lb.)———————(kg.)...

Factor	Score points	Sample score
Appearance	25	....
Uniformity	20	....
Defects	40	....
Character	15	....
Total	10	....

Flavor and odor ....
Final grade ....

Subpart E—United States Standards for Grades of Ocean-Perch Fillets and Pacific Ocean-Perch Fillets

§ 263.301 Product description.

The product described in this part consists of: (a) Clean, whole, wholesome fillets, cut away from either side of the ocean perch, Sebastes marinus, which are packaged in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product; or (b) clean, whole, wholesome fillets, cut away from either side of the Pacific ocean perch, Sebastodes alutus, which are packaged in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product.

§ 263.302 Grades of ocean-perch fillets.

(a) "U.S. Grade A" is the quality of ocean-perch fillets that possess good flavor and odor; and for those factors of quality which are rated in accordance with the scoring system outlined in this part the total score is not less than 85 points.

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[1] The purpose of the "test run" is to determine the time necessary to thaw the product. The complete thawing of the product is determined by frequent but gentle squeezing of the bag until no hard core of ice crystals are felt. This package which has been squeezed can not be used for drained weight calculations.

(b) "U.S. Grade B" is the quality of ocean-perch fillets that possess at least reasonably good flavor and odor; and for those factors of quality which are rated in accordance with the scoring system outlined in this part the total score is not less than 70 points.

(c) "Substandard" is the quality of ocean-perch fillets that fail to meet the requirements of U.S. Grade B.

§ 263.304 Product forms.

(a) Types:

(1) Fresh.

(2) Frozen, solid pack; glazed and unglazed.

(3) Frozen individually; glazed or unglazed.

(b) Styles:

(1) Skin on.

(2) Skinless.

§ 263.306 Recommended weights and dimensions.

(a) The net weights and dimensions of packaged ocean-perch fillets and Pacific ocean-perch fillets are not incorporated in the grades of the finished product since net weights and dimensions, as such, are not factors of quality for the purpose of these grades.

(b) It is recommended that the net weight of the packaged ocean-perch fillets and Pacific ocean-perch fillets be not less than 12 ounces and not over 10 pounds and that the product be classified as large, medium, or small as classified by common commercial size classification practices.

§ 263.311 Ascertaining the grade.

The grade of ocean-perch fillets is ascertained by examining the product in the frozen, thawed, and cooked states. The following factors of quality are evaluated in ascertaining the grade of the product: Flavor and odor, appearance, size, workmanship defects, and character.

These factors are rated in the following manner:

(a) *Flavor and odor.* This factor is rated directly by organoleptic evaluation. Score points are not assessed (see § 263.312).

(b) *Appearance, size, workmanship defects, and character.* The relative importance of these factors is expressed numerically on the scale of 100. The maximum number of points that may be given each of these factors are:

Factors	Points
Appearance	15
Size	20
Absence of defects	50
Character	15
Total possible score	100

§ 263.312 Evaluation of the unscored factor of flavor and odor.

(a) *Good flavor and odor.* "Good flavor and odor" (essential requirement for a Grade A product) means that the fish flesh has good flavor and odor characteristic of the species (either Sebastes marinus or Sebastodes alutus) and is free from staleness, and off-flavors and off-odors of any kind.

(b) *Reasonably good flavor and odor.* "Reasonably good flavor and odor" (minimum requirement for a Grade B product) means that the fish flesh may be somewhat lacking in good flavor and odor; and is free from objectionable off-flavors and off-odors of any kind.

§ 263.313 Evaluation and rating of the scored factors; appearance, size, absence of defect, and character.

The essential variations in quality within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. Point deductions are allotted for each degree or amount of variation within each factor. The net score for each factor is the maximum points for that factor less the sum of the deduction-points within the factor. The total score for the product is the sum of the net scores for the four scored factors.

§ 263.314 Appearance.

(a) The factor of appearance refers to the color of the fish flesh, and to the degree and amount of surface dehydration of the frozen product.

(b) For the purpose of rating the factor of appearance the schedule of deduction-points in Table I apply. Frozen ocean-perch fillets which receive 15 deduction points for the factor of appearance shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE I—SCORE DEDUCTIONS FOR APPEARANCE

Color of product	Deduction points
No discoloration	0
Slight yellowing	4
Moderate yellowing	9
Excessive yellowing and/or rusting	15

TABLE II—SCORE DEDUCTIONS FOR DEHYDRATION SUBFACTOR

Degree of drhydration of frozen product	Surface area affected (percent)		Deduction points
	Over—	Not over—	
Slight—Shallow and not color masking.	0	1	0
	1	50	2
	50	100	5
Moderate—Deep, but just deep enough to easily scrape with fingernail.	0	25	5
	25	50	10
	50	100	15
Excessive—Deep dehydration not easily scraped off.	0	10	10
	5	15	15

§ 263.315 Size.

(a) The factor of size refers to the degree of freedom from undesirably small fillets.

(b) For the purpose of rating the factor of size, the schedule of deduction-points in Table II apply. Ocean-perch fillets which receive 20 deduction-points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule

TABLE II—SCORE DEDUCTIONS FOR SIZE OF FILLETS

[Deduction points]

Number of fillets per pound	Number of small fillets or pieces of fillets											
	0	1	2	3	4	5	6	7	8	9	10	11
	Under two ounces in weight											
2	0	5										
3	0	5	10									
4	0	4	7	10								
5	0	4	7	10	15							
6	0	3	6	9	15	20						
	Under one ounce in weight											
7	0	5	10	15	20	20	20					
8	0	5	10	15	20	20	20	20				
9	0	0	5	10	15	20	20	20	20			
10	0	0	5	10	15	20	20	20	20	20		

TABLE II—SCORE DEDUCTIONS FOR SIZE OF FILLETS—Continued

[Deduction points]

Number of fillets per pound	Number of small fillets or pieces of fillets											
	0	1	2	3	4	5	6	7	8	9	10	11
	Under one ounce in weight—Cont.											
11	0	0	5	10	15	20	20	20	20	20	20	......
12	0	0	4	7	10	15	15	20	20	20	20	20
13	0	0	0	4	7	10	15	15	15	20	20	20
14	0	0	0	1	4	7	10	15	15	15	20	20
15 or more	0	0	0	0	1	4	7	10	15	15	15	20

§ 263.316 Workmanship defects.

(a) The factor of "workmanship defects" refers to the degree of freedom from improper packing, cutting and trimming imperfections, blemishes, and bones. Evaluation for the defect of improper packing is made on the frozen product. Evaluation of the defects of cutting and trimming, blemishes, and bones are made on the thawed product.

(1) *Improper packing.* "Improper packing" means poor arrangement of fillets, presence of voids, depressions, frost, and the imbedding of packaging material into the frozen fish flesh.

(2) *Cutting and trimming imperfections.* "Cutting and trimming imperfections" means that the fillets have ragged edges, tears, holes, or are otherwise improperly cut or trimmed.

(3) *Blemish.* "Blemish" means an instance of blood-spot, bruise, black-belly lining or membrane, fin, scales, or extraneous material. Blemish also means an instance of skin on skinned fillets. One "instance of blood spot" is one of such size and prominence as to be considered objectionable. An "instance of bruise" consists of a bruise not less than ½ square inch and not more than 1½ square inches in area; each bruise larger than 1½ square inches is considered as two instances of bruise. An "instance of black-belly lining or membrane" is any piece of black-belly lining or membrane not less than ½ inch and not more than 1 inch in length; each additional ½ inch length of individual pieces of black-belly lining or membrane longer than 1 inch is considered as an instance. Each aggregate area of identifiable fin or parts of any fin up to 1 square inch is considered as one "instance of fin". One "instance of scales" is an aggregate area of scales greater than ½ square inch per fillet. One "instance of skin" consists of one piece of skin at least ½ square inch in area; except that any skin patches larger than 1½ square inches are considered as two instances of skin.

(4) *Bones.* One "instance of bones" means an objectionable bone or group of bones occupying or contacting a circular area up to 1 square inch. An objectionable bone is any bone of such size and rigidity as to remain objectionable after cooking. Bones which will soften or disintegrate after cooking are not considered objectionable.

(b) For the purpose of rating the factor of absence of defects the schedule of deduction-points in Table III applies.

TABLE III—SCORE DEDUCTIONS FOR WORKMANSHIP DEFECTS

Subfactors	Method of determining subfactor score	Deduction points
Improper packing.	Slight defects, not noticeably affecting the product's appearance.	0
	Moderate defects, noticeably affecting the product's appearance.	2
	Excessive defects, seriously affecting product's appearance.	4
Blemishes	Number of blemishes per 1 lb. of product when there are 6 or less fillets per lb.:	
	Over 0 not over 2	0
	Over 2 not over 4	2
	Over 4 not over 5	4
	Over 5 not over 6	7
	Over 6 not over 7	10
	Over 7 not over 8	15
	Over 8 not over 9	20
	Over 9 not over 10	30
	Over 10 not over 11	40
	Over 11	50
	Number of blemishes per 1 lb. of product when there are 7 to 12 (inclusive) fillets per lb.	
	Over 0 not over 3	0

TABLE III—SCORE DEDUCTIONS FOR WORKMANSHIP DEFECTS—Continued

Subfactors	Method of determining subfactor score	Deduction points
	Over 3 not over 5	2
	Over 5 not over 6	4
	Over 6 not over 7	7
	Over 7 not over 8	10
	Over 8 not over 9	15
	Over 9 not over 10	20
	Over 10 not over 11	30
	Over 11 not over 12	40
	Over 12	50
	Number of blemishes per 1 lb. of product when there are 13 or more fillets per lb.:	
	Over 0 not over 6	0
	Over 6 not over 8	2
	Over 8 not over 9	4
	Over 9 not over 10	7
	Over 10 not over 11	10
	Over 11 not over 12	15
	Over 12 not over 13	20
	Over 13 not over 14	30
	Over 14 not over 15	40
	Over 15	50
Bones	Number of instances per lb. of product when there are 6 or less fillets per lb.:	
	Over 0 not over 4	0
	Over 4 not over 5	1
	Over 5 not over 6	2
	Over 6 not over 7	5
	Over 7 not over 8	12
	Over 8 not over 9	20
	Over 9 not over 10	35
	Over 10	50
	Number of instances per lb. of product when there are 7 or more fillets per lb.:	
	Over 0 not over 3	0
	Over 3 not over 4	1
	Over 4 not over 5	2
	Over 5 not over 6	5
	Over 6 not over 7	12
	Over 7 not over 8	20
	Over 8 not over 9	35
	Over 9	50
Cutting and trimming.	Slight defects, scarcely noticeable.	0
	Moderate defects noticeable but not affecting the usability of any fillets.	4
	Excessive defects impairing:	
	(a) The usability of up to ¼ of the total number of fillets.	8
	(b) The usability of over ¼ but not more than ½ of the total number of fillets.	16
	(c) The usability of over ½ of the total number of fillets.	40

§ 263.317 Character.

(a) General: The factor of character refers to the tenderness and moistness of the cooked fish flesh.

(b) For the purpose of rating the factor of character, the schedule of deduction-points in Table IV apply. Ocean-perch fillets which receive 15 deduction-points for the factor of character shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE IV—SCORE DEDUCTIONS FOR CHARACTER

Texture of the cooked fish	Point deductions
1. Texture:	
(a) Firm, but tender and moist	0
(b) Slightly tough, dry, and/or fibrous, or mushy	4
(c) Moderately tough, rubbery, and/or fibrous	8
(d) Excessively tough, rubbery, and/or fibrous	15

§ 263.321 Cooking in a suitable manner.

"Cooking in a suitable manner" shall mean that the product is cooked as follows: Place the thawed unseasoned product into a boilable film-type pouch. Fold the pouch over a suspension bar and clamp it in place so that a loose seal is maintained. Immerse the pouch and its contents in boiling water and cook until the internal temperature of the fillets reaches 160° F. (about 20 minutes).

§ 263.325 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 Subpart A of this chapter (Regulations Governing Processed Fishery Products).

§ 263.331 Score sheet for ocean-perch fillets.

Label ....

Size and kind of container ....

Container mark or identification ....

Size of lot ....

Number of packages per master carton ....

Size of sample ....

Type of overwrap ....

Actual net weight ——— (lb.) ——— (kg.) ....

Factor	Score points	Sample score
Appearance	15	
Size	20	

Factor	Score points	Sample score
Absence of defects	50	
Character	15	
Total	100	
Flavor and odor		
Final grade		

PART 264—UNITED STATES STANDARDS FOR GRADES OF FROZEN FISH BLOCKS AND PRODUCTS MADE THEREFROM

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264.401 Description of the product.
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AUTHORITY: 7 U.S.C. 1621-1630.

SOURCE: 42 FR 52764, Sept. 30, 1977, unless otherwise noted.

Subpart A—United States Standards for Grades of Frozen Fish Blocks

§ 264.101 Description of the product.

Frozen fish blocks are rectangular-shaped masses of cohering frozen fish flesh of a single species. They consist of adequately drained whole, wholesome fillets or pieces of whole, wholesome fillets cut into small portions but not ground or comminuted; and they are frozen and maintained at temperatures necessary for the preservation of the product. Frozen fish blocks are made in two styles.

(a) *Style I—skinless fish blocks.* Fish blocks that have been made from skinless fillets.

(b) *Style II—skin-on fish blocks.* Fish blocks that have been made from demonstrably acceptable skin-on fillets.

§ 264.102 Grades of frozen fish blocks.

(a) "U.S. Grade A" is the quality of frozen fish blocks that (1) possess a good flavor and odor and that (2) have a total score of 85 to 100 points for those factors that are rated in accordance with the scoring system outlined in this part.

(b) "U.S. Grade B" is the quality of frozen fish blocks that (1) possess at least a reasonably good flavor and odor and that (2) have a total score of 70 to 84 points for those factors that are rated in accordance with the scoring system in this part.

(c) "Substandard" is the quality of frozen fish blocks that meet product description but fail to meet the requirements of U.S. Grade B.

§ 264.111 Determination of the grade.

The grade is determined by examining the product in the frozen, thawed, and cooked states and is evaluated by considering the following factors:

(a) *Factors rated by score points* Points are deducted for variation in the quality of each factor in accordance with the schedule in table 1. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100; the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling and tasting the product after it has been cooked in accordance with § 264.121.

(1) Good flavor and odor (essential requirements for a Grade A product) means that the cooked product has the typical flavor and odor of the indicated species of fish and is free from rancidity, bitterness, staleness, and off-flavors and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a Grade B product) means that the cooked product is lacking in good flavor and odor but is free from objectionable off-flavors and off-odors of any kind.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT

Factors scored	Aspects determining score	Deduct
	FROZEN STATE	
1 Color	Small degree: Moderate yellowing	4
	Large degree: Excessive yellowing and/or rusting	16
2 Dehydration	Minor: Moderate dehydration for each 10 percent of surface area affected.	3
	Major: Excessive dehydration for each 10 percent of surface area affected.	6
3 Uniformity of size	Minor: Each deviation from declared size in length, width, or thickness ± ⅛ to ¼ inch.	3
	Major: Each deviation from declared size in length, width, or thickness over ± ¼ inch.	6
4 Uniformity of weight	Minor: Any minus deviation from declared weight of more than 1 ounce but not more than 4 ounces.	3
	Major: Any minus deviation from declared weight more than 4 ounces	8
5 Angles	Edge angle—2 out of 3 readings deviating ⅜ inch	2
	Corner angle—each angle deviating ⅜ inch	
6 Improper fill	For each 1 ounce unit cut from the block that would be adversely affected due to air spaces, ice spaces, depressions, ragged edges, damage, or imbedded packaging material.	1
	THAWED STATE	
7 Blemishes	Each blemish in 5 pounds of fish block	2

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT—Continued

Factors scored	Aspects determining score	Deduct
8 Bones	Each instance of bones in 5 pounds of fish block	5
	COOKED STATE	
9 Texture	Small degree: Moderately tough, dry, rubbery, or mushy Large degree: Excessively tough, dry, rubbery, or mushy	5 15

§ 264.121 Definitions.

(a) *Examination of sample, frozen state.* (1) Color refers to reasonably uniform color characteristics of the species used. Deviations from normal color include noticeable yellowing and/or rusting of the fish surface.

(2) Dehydration refers to loss of moisture from the fish surfaces during frozen storage. Moderate dehydration is color-masking masking and can easily be scraped off with a fingernail. Excessive dehydration is deep color-masking and requires a knife or other hard instrument to scrape it off.

(3) Uniformity of size refers to the degree of conformity to the declared size. A deviation is considered to be any deviation from stated length, width, or thickness, or from the average dimensions if no dimensions are stated. Only one deviation from each dimension may be assessed. Two readings for length, three readings for width, and four readings for thickness will be measured.

(4) Uniformity of weight refers to the degree of conformity to the weight. Only underweight deviations are assessed.

(5) An acceptable edge angle is an angle formed by two adjoining surfaces whose apex is within ⅜ inch of a carpenter's square placed along the surfaces. For each edge angle, three readings will be made and at least two readings must be acceptable for the whole edge angle to be acceptable. An acceptable corner angle is an angle formed by 3 adjoining surfaces whose apex is within ⅜ inch of the apex of a carpenter's square placed on the edge surfaces. Unacceptable angles fail to meet these criteria.

(6) Improper fill refers to surface and internal air or ice voids, ragged edges, or damage. It is measured as the number of 1-ounce units that would be adversely affected when the block is cut. For this purpose, the 1-ounce unit is considered to be 4 × 1 × ⅝ inch.

(b) *Examination of the product, thawed state.* (1) Blemishes refer to a piece of skin, scale, a blood spot, a fin, a bruise, a black belly lining, a piece of nape membrane or a harmless piece of extraneous material. One "piece of skin" consists of one piece ½ square inch in area; except that for skin patches larger than 1 square inch, an additional instance shall be assessed for each additional ½ square inch in area. "Blood spot" is one of such size and degree as to be considered objectionable. A "piece of black belly lining" is any piece longer than ½ inch. "Fin" is one fin or one identifiable part of a fin. A piece of nape membrane consists of one piece ½ square inch in area or larger. "Scales" are aggregates of one or more scales of such degree as to be considered objectionable. Skin is not to be considered a blemish on Style II block. Blemishes are measured on a 5-pound portion cut from the edge of the fish block and thawed.

(2) "Bones" refers to any potentially harmful bones in the fish block. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate. One instance of bones means one bone or group of bones occupying or contacting a circular area of 1 square inch. Bones are measured on the same 5-pound thawed portion cut from the fish block.

(c) *Examination of the cooked product.* (1) Heating in a suitable manner means heating the product in one of two ways, as follows:

(i) Cut three or more portions about 4 by 3 by ½ inches from a frozen block. Wrap them individually or in a single layer in aluminum foil. Place the package portions on a wire rack suspended over boiling water in a covered container. Steam the packaged portions until the product is thoroughly heated, or

(ii) Cut and package the portions as previously described. Place the packaged portions on a flat cookie sheet or shallow flat-bottom pan of sufficient size so that the packages can be evenly spread on the sheet or pan. Place the pan and frozen contents in a properly ventilated oven heated to 400° F. and remove when the product is thoroughly heated.

(2) Texture refers to the condition of the cooked fish flesh. The texture should be firm, slightly resilient, but not tough or rubbery; and should be moist, but not mushy. Deductions for texture will follow the deductions assessed in table 1.

(3) Flavor and odor is evaluated organoleptically as described in § 263.11(b).

(d) *General definitions.* (1) "Demonstrably acceptable" shall mean that the product has been produced commercially and met customer acceptance.

(2) "Adversely affected" shall mean that the unit cut would deviate more than 15 percent plus or minus from 1 ounce.

(3) "Small" (overall assessment) refers to a condition that is noticeable, but is not seriously objectionable.

(4) "Large" (overall assessment) refers to a condition that is not only noticeable, but is seriously objectionable.

(5) "Minor" (measured quantity or area) refers to a defect that affects the appearance or utility of the product or both.

(6) "Major" (measured quantity or area) refers to a defect that seriously affects the appearance or utility of the product or both.

§ 264.125 Tolerances for certification of officially drawn samples.

The sample rates and grades of specific lots shall be certified on the basis of the regulations governing inspection and certification of processed fishery products, processed products thereof, and certain other processed food products.

Subpart B—United States Standards for Grades of Frozen Minced Fish Blocks

SOURCE: 44 FR 32368, June 6, 1979, unless otherwise noted.

§ 264.151 Scope and product description.

These standards shall apply to frozen minced fish blocks which are uniformly shaped masses of cohering minced fish flesh. A block may contain flesh from a single species or a mixture of species with or without food additives. The minced flesh consists entirely of mechanically separated fish flesh processed and maintained in accordance with good commerical practice. This minced flesh is made entirely from species which are known to be safe and suitable for human consumption.

§ 264.152 Product forms.

(a) *Types.* (1) Unmodified—No food additives used.

(i) Single species.

(ii) Mixed species.

(2) Modified—Contains food additives (see § 264.155).

(i) Single species.

(ii) Mixed species.

(b) *Color classifications.* (1) White. (2) Light. (3) Dark. See appendix 1, § 264.157 for definition and method of measurement.

(c) *Texture.* (1) Coarse—Flesh has a fibrous consistency.

(2) Fine—Flesh has a partially fibrous consistency because it is a mixture of small fibers and paste.

(3) Paste/Puree—Flesh has no fibrous consistency.

§ 264.153 Grades—quality factors.

(a) *U.S. Grade A.* Minced fish blocks shall:

(1) Possess good flavor and odor, and

(2) Comply with the limits of defects for U.S. Grade A quality in accordance with § 264.154.

(b) *U.S. Grade B.* Minced fish blocks shall:

(1) Possess reasonably good flavor and odor, and

(2) Comply with the limits of defects for U.S. Grade B quality in accordance with § 264.154.

(c) *U.S. Grade C.* Minced fish blocks shall:

(1) Possess minimally acceptable flavor and odor with no objectional off-flavors or off-odors, and

(2) Comply with the limits of defects for U.S. Grade C quality in accordance with § 264.154.

§ 264.154 Determination of grade.

(a) *Procedures for grade determination.* The grade shall be determined by: (1) Sampling in accordance with the sampling plan described in paragraph (b) of this section; (2) evaluating odor and flavor in accordance with paragraph (c) of this section; (3) examining for defects in accordance with paragraphs (d) and (e) of this section; and (4) using the results to assign a grade as described in paragraph (f) of this section.

(b) *Sampling.* The sampling rate of specific lots for all inspections shall be in accordance with the sampling plans contained in part 260 of this chapter. For examination in the frozen state, and entire block shall be used as a sample unit. For examination in the thawed state, a subsample of at least 5 pounds weight shall be used.

(c) *Evaluation of flavor and odor.* Evaluation of flavor and odor shall take place after the sample has been cooked by any of the procedures given below. These procedures are based on heating sample to internal temperature of at least 160° F (70° C), but without overcooking. Cooking times vary according to size of sample and the equipment used. If determining cooking time, cook extra sample using a temperature measuring device to determine internal temperature.

(1) Bake procedure—Wrap a minimum of 12 ounces of sample in aluminum foil and distribute evenly on flat cookie sheet or shallow flat pan. Heat in ventilated oven, preheated to 400° F (204° C), until internal temperature reaches at least 160° F (70° C).

(2) Steam procedure—Wrap a minimum of 12 ounces of sample in aluminum foil and place on wire rack suspended over boiling water in a covered container. Heat until internal temperature of sample reaches at least 160° F (70° C).

(d) *Examination for physical defects.* The sample unit will be examined for defects using the list of defects definitions § 264.154(e), and the defects noted and categorized as minor, major, and serious, in accordance with Table 1 of this part.

(e) *Definitions of defects*—(1) *Deteriorative color* refers to discoloration from the normal characteristics of the material used. Deterioration can be due to yellowing of fatty material, to browning of blood pigments, or other changes.

(i) Slight deteriorative discoloration—refers to a color defect that is slightly noticeable but does not seriously affect the appearance, desirability, or eating quality of the product.

(ii) Moderate deteriorative discoloration—refers to a color defect that is conspicuously noticeable but does not seriously affect the appearance, desirability, or eating quality of the product.

(iii) Excessive deteriorative discoloration—refers to a defect that is conspicuously noticeable and that seriously affects the appearance, desirability, or eating quality of the product.

(2) *Dehydration* refers to a loss of moisture from the surfaces of the product during frozen storage.

(i) Slight dehydration—is surface color masking, affecting more than 5 percent of the area, which can be readily removed by scraping with a blunt instrument.

(ii) Moderate dehydration—is deep color masking penetrating the flesh, affecting less than 5 percent of the area, and requiring a knife or other sharp instrument to remove.

(iii) Excessive dehydration—is deep color masking penetrating the flesh, affecting more than 5 percent of the area, and requiring a knife or other sharp instruments to remove.

(3) *Uniformity of size* refers to the degree of conformity to the declared contracted dimensions of the blocks. A deviation is considered to be any deviation from the contracted length, width, or thickness; or from the average dimensions of the blocks, physically determined, if no dimensions are contracted. Only one deviation from

each dimension may be assessed. Two readings for length, three readings for width, and four readings for thickness will be measured.

(i) Slight—two or more deviations from declared or average length, width, and thickness up to ±⅛ inch.

(ii) Moderate—two or more deviations from declared or average length, width, and thickness from ±⅛ inch to ±⅜ inch.

(iii) Excessive—two or more deviations from declared or average length, width, and thickness over ±⅜ inch.

(4) *Uniformity of weight* refers to the degree of conformity to the declared weight. Only underweight deviations are assesssed.

(i) Slight—any minus deviation of not more than 2 ounces.

(ii) Excessive—any minus deviation over 2 ounces.

(5) *Angles.* An acceptable edge angle is an angle formed by two adjoining surfaces of the fish block whose apex is within ⅜ inch of a carpenter's square placed along the surfaces of the block. For each edge angle, three readings will be made and at least two readings must be acceptable for the whole edge angle to be acceptable. An acceptable corner angle is an angle formed by 3 adjoining surfaces whose apex is within ⅜ inch of the apex of a carpenter's square placed on the edge surfaces. Any edge or corner angle which fails to meet these measurements is unacceptable.

(i) Slight—two unacceptable angles.

(ii) Moderate—three unacceptable angles.

(iii) Excessive—four or more unacceptable angles.

(6) *Improper fill* refers to surface and internal air or ice voids, ragged edges, or damage. Improper fill is measured as the minimum number of 1-ounce units that would be adversely affected when the block is cut. For this purpose, the dimensions of a 1-ounce unit are 4×1×⅝ inch.

(i) Slight—1 to 3 units adversely affected.

(ii) Excessive—over 3 units adversely affected.

(7) *Blemishes* refer to pieces of skin, scales, blood spots, nape (belly) membranes (regardless of color), or other harmless extraneous material. One instance means that the area occupied by a blemish or blemishes is equal to a ¼ inch square. Instances are prorated on a per pound basis.

(i) Slight—5 to 15 instances per pound.

(ii) Moderate—more than 15 but less than 30 instances per pound.

(iii) Excessive—30 or more instances per pound.

(8) *Bones* refer to any objectionable bone or piece of bone that is ¼ inch or longer and is sharp and rigid. Perceptible bones shall also be checked by their grittiness during the normal evaluation of the texture of the cooked product (10). Bones are prorated on a five pound sample unit basis.

(i) Slight—1 to 2 bones per five pound sample unit.

(ii) Moderate—3 to 4 bones per five pound sample unit.

(iii) Excessive—over 4 bones, but not to exceed 10 bones, per five pound sample unit.

(9) *Flavor and odor* are evaluated organoleptically by smelling and tasting the product after it has been cooked in accordance with § 264.154 (c).

(i) Good flavor and odor (essential requirements for a Grade A product) means that the cooked product has the flavor and odor characteristic of the indicated species of fish and is free from staleness, bitterness, rancidity, and off-flavors and off-odors of any kind.

(ii) Reasonably good flavor and odor (minimum requirements of Grade B product) means that the cooked product is moderately absent of flavor and odor characteristic of the indicated species. the product is free from rancidity, bitterness, staleness, and off-flavors and off-odors of any kind.

(iii) Minimal acceptable flavor and odor (minimum requirements of a Grade C product) means that the cooked product has moderate storage-induced flavor and odor, but is free from any objectionable off-flavors and off-odors that may be indicative of spoilage or decomposition.

(10) *Texture defects* are judged on a sample of the cooked fish.

(i) Slight—flesh is fairly firm, only slightly spongy or rubbery. It is not mushy. There is no grittiness due to bone fragments.

(ii) Moderate—flesh is mildly spongy or rubbery. Slight grittiness may be present due to bone fragments.

(iii) Excessive—flesh is definitely spongy, rubbery, very dry, or very mushy. Moderate grittiness may be present due to bone fragments.

(f) *Grade assignment.* The sample unit shall be assigned the grade into which it falls in accordance with the limits for defects, summarized as follows:

	Flavor and odor	Maximum number of physical defects permitted		
		Minor	Major	Serious
Grade A	Good	3	0	0
Grade B	Reasonably good	5	1	0
Grade C	Minimal acceptable	7	3	1

Each lot of minced blocks shall be assigned that grade which corresponds to the acceptance number for deviants prescribed in Tables II, V, or VI of 50 CFR 260.61.

§ 264.155 Additives

Minced fish blocks may be modified with food additives as necessary to stabilize product quality in accordance with the requirements of the regulations contained in 21 CFR Part 171.

§ 264.156 Hygiene

The fish material shall be processed and maintained in accordance with the requirements of 50 CFR 260.98 to 260.104 and the requirements of good manufacturing practice contained in 21 CFR Part 110.

Table 1

Types Physical defects	Degrees	Categories		
		Minor	Major	Serious
Frozen State:				
Deteriorative color	Slight	101		
	Moderate		201	
	Excessive			301
Dehydration	Slight	102		
	Moderate		202	
	Excessive	24	63	302
Uniformity of size	Slight	103		
	Moderate		203	15
	Excessive			303
Uniformity of weight	Slight	104		
	Excessive			304
Unacceptable angles	Slight	105		
	Moderate		205	
	Excessive			305
Improper fill	Slight	106		
	Excessive			306
Thawed State:				
Blemishes	Slight	107		
	Moderate		207	
	Excessive			307
Bones	Slight	108		
	Moderate	208		
	Excessive			308
Cooked State: Texture	Slight	109		
	Moderate		209	
	Excessive			309

NOTE: The code numbers shown in the above Table are for identification of defects for recording purposes only. They are keyed to the nature and severity of the defect. They are not scores.

§ 264.157 Appendix 1. Definition and method of measuring color classifications.

Section 264.157 Appendix 1. Definition and procedure of measuring color classifications cited in § 264.152(b). This appendix is intended for laboratory use to classify color when a field procedure is questioned.

Introduction. The procedure described below is to be followed when a photoelectric or visual reflectometer is used. The light source and filters for a photoelectric or visual reflectometer are designed to view a sample primarily in the red region of the spectrum, at or near 640 nanometers. The geometry of its illumination and observation conditions provide directions approximately 45 degrees and 0 degrees from a common perpendicular. The viewing area is, preferably, approximately six square inches or 39 square centimeters. Reflectometers having much smaller viewing areas may be used if enough measurements are made on different areas of the sample to describe its average reflectance accurately. The receptor characteristics provide reflectance measurements that are accurate to within 1 percent of full-scale reading using Munsell neutral value standards as described below.

This description of a reflectometer is intended to avoid undue restrictions to equipment provided by one, or a very few, manufacturers. In the majority of situations, a variety of reflectometers will be suitable for color classification of samples from minced fish blocks. In the event of a borderline sample whose color classification is disputed, the sample is measured again using a different, more accurate, reflectometer. For example, if a visual reflectometer had been used to classify a disputed sample, a more accurate photoelectric reflectometer should be used for the remeasurement.

Sample preparation. The color of the sample must represent the average color of the block when it is cut from that block. At least one of its sides must be large enough and flat enough to completely cover the reflectometer's viewing area. The sample must be cooked from the frozen state by the bake procedure or, if previously coated with batter and breading, by the deep fat frying procedure, 18.B01 in "Official Methods of Analysis" 2nd supplement to the 12th edition, of the Association of Official Analytical Chemists. If the sample is covered with batter and breading for cooking, this cover should be removed with a sharp serrated knife so that the viewing area surface remains flat. The cooked sample must also be thick enough to prevent transmission of external, ambient light into the viewing area of the reflectometer.

Measurement of color. The reflectometer itself is described above at "Introduction." It may be calibrated and used with neutral value standards furnished by the manufacturer of a reflectometer or with Munsell matte-finish neutral value standards. When other standards are used, they must have been calibrated against Munsell matte-finish neutral value standards using the same reflectometer. All standards must be large enough and thick enough to cover the reflectometer's viewing area and prevent transmission of external ambient light into this viewing area.

Munsell neutral value standards are based on the Munsell notation system as defined in terms of the CIE (International Commission on Illumination) standard observer and coordinate system for color specification. Chip or swatch samples of Munsell standards may be obtained from Munsell Color, Inc., Baltimore, Md. 21218, or made as given by the relationship between Munsell value and luminous reflectance derived by a subcommittee of the Optical Society of America and Published in the "Journal of the Optical Society of America," volume 33, page 406 (1943). This relationship is based on the equivalence in luminous reflectance of light of 555 nanometer wave length to a given percent of the luminous reflectance of magnesium oxide. For the Munsell values used in this section, this relationship has been extracted from page 406 of this reference and is given in the following table, where "N" is the Munsell value and "Yv" is the equivalent luminous reflectance of the stated percent of magnesium oxide:

N	Yv
N2.00	3.13
N6.00	30.05
N6.25	33.04
N6.50	36.20
N7.00	43.06
N7.25	46.77
N7.50	50.68
N9.00	78.66

Definition of "white" samples. Calibrate the reflectometer to 0-percent reflectance using a N2.0 standard, then to 90 percent using a N9.0 standard. Place a sample on the viewing area and measure its reflectance. Samples from "white" blocks have a relative reflectance greater than a N7.25 standard; but if a particular sample has a relative reflectance between N7.0 and N7.5 standards, its reflectance is measured again using an expanded scale before defining it as "white." Recalibrate the reflectometer using a N7.0 standard to set 0-percent reflectance and a N7.5 standard to set 100-percent reflectance on its scale. With these calibration settings, a "white" sample is defined as having a greater relative reflectance than a N7.25 standard.

Definition of "dark" samples. Calibrate the reflectometer to a 0-percent reflectance using a N2.0 standard, then to 90 percent reflectance using a N9.0 standard. Place a sample on the viewing area and measure its reflectance. Samples from "dark" blocks have a relative reflectance less than a N6.25 standard; but if a particular sample has a relative reflectance between N6.0 and N6.5 standards, its reflectance is measured again using an expanded scale before defining it as "dark." Recalibrate the reflectometer using a N6.0 standard to set 0-percent reflectance and a N6.5 standard to set 100-percent reflectance on its scale. With these calibration settings, a "dark" sample is defined as having a lower relative reflectance than a N6.25 standard.

Definition of "light" samples. If a sample does not satisfy the criteria given above for "white" or "dark" samples, it is classified as "light.'

Subpart C—United States Standards for Grades of Frozen Raw Fish Portions

§ 264.201 Description of the product.

The product described in this part consists of clean, wholesome, shaped masses of cohering pieces (not ground) of fish flesh. The fish portions are cut from frozen fish blocks, and are packaged in accordance with good manufacturing practice. They are maintained at temperatures necessary for the preservation of the product. All fish portions in an individual package are prepared from the flesh of one species of fish.

§ 264.202 Styles.

(a) *Style I—Skinless portions.* Portions prepared from fish blocks which have been made with skinless fillets.

(b) *Style II—Skin-on portions.* Portions prepared from fish blocks which have been made from demonstrably acceptable skin-on fillets.

§ 264.203 Types.

(a) *Type I—Uniform shaped.* All portions in the sample are uniformly shaped.

(b) *Type II—Specialty cut.* All portions not covered in Type I.

§ 264.204 Grades.

(a) "U.S. Grade A" is the quality of frozen raw fish portions that: (1) Possess a good flavor and odor and that (2) for those factors that are rated in accordance with the scoring system outlined in this part, have a total score of 85 to 100 points.

(b) "U.S. Grade B" is the quality of frozen raw fish portions that: (1) Possess at least reasonably good flavor and odor, and that (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" or "Utility" is the quality of frozen raw fish portions that meet the requirements of § 264.201 but that otherwise fail to meet the requirements of "U.S. Grade B."

§ 264.205 Labeling requirements for styles of frozen fish portions.

Sections 260.86 (a), (b), and (c) of this chapter states the requirements for the use of approved grade marks, inspection marks and combined grade and inspection marks on processed fishery products. When an approved inspection mark is used on Style II (§ 264.202) of frozen raw fish portions, that style shall be conspicuously revealed on the label as having been made from "skin-on fillets."

§ 264.211 Determination of the grade.

The grade is determined by examining the product for factors 1-8 in the frozen state and factors 9-11 in the cooked state.

(a) *Factors rated by score points.* Points are deducted for variations in the quality of each factor in accordance with the schedule in Table I. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100, the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling and tasting after the product has been cooked in accordance with § 264.221(c).

(1) Good flavor and odor (essential requirements for U.S. Grade A product) means that the cooked product has the typical flavor and odor of the indicated species and is free from rancidity, bitterness, staleness, and other off-flavor and odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a U.S. Grade B product) means that the cooked product is lacking in good flavor and odor, but is free from objectionable off-flavors and off-odors of any kind.

§ 264.221 Definitions and methods.

(a) *Selection of the sample unit.* The sample unit shall consist of 10 frozen raw fish portions taken at random from one or more packages as required. The fish portions for examination in the frozen and cooked state are spread out on a flat pan or sheet and are examined according to Table 1. Definition of factors for point deductions are as follows:

(b) *Examination of sample, frozen state.* (1) "Ease of separation" refers to the difficulty of separating the portions from each other or from the packaging material.

(2) "Broken portion" means a portion with a break or cut equal to or greater than one-half the width or length of the portion.

(3) "Damaged portion" means a portion that has been mashed, physically or mechanically injured, misshaped or mutilated to the extent that its appearance is materially affected. The amount of damage is determined by using a grid composed of squares ¼ inch × ¼ inch to measure the area of the portion affected. No deductions are made for damage of less than ¼ inch × ¼ inch.

(4) "Voids" refer to objectionable holes, spaces, or depressions in the fish flesh. Instances of voids refer to each occurrence measured by placing a plastic grid marked off in ¼-inch squares at last ⅛ inch in depth over the affected area. Each square is counted as one whether it is full or fractional. No deductions are made for voids of less than ¼ inch × ¼ inch.

TABLE 1. SCHEDULE OF POINT DEDUCTIONS PER SAMPLE

Factors scored	Method of determining score	Deduct
	FROZEN STATE	
1 Ease of separation	Minor: Hand separated with difficulty. Each affected	3
	Major: Separated only by knife or other instrument. Each affected	6
2 Broken portion	Break or cut greater than ½ width or length. Each affected	10
3 Damaged portion	Mashed, mechanically and/or physically injured, misshaped or mutilated	
	Minor: 1 to 5 instances.[1] Each affected	2
	Major: Over 5 instances. Each affected	4
4 Voids	Holes, spaces, or depressions:	
	Minor: 1 to 5 instances. Each affected	1
	Major: Over 5 instances. Each affected	2

TABLE 1. SCHEDULE OF POINT DEDUCTIONS PER SAMPLE—Continued

Factors scored	Method of determining score	Deduct
5 Discoloration (overall assessment)	Small degree: Slight yellowing or rusting	31
	Large degree: Excessive yellowing or rusting	
6 Dehydration (overall assessment)	Surface dehydration:	
	Small degree: Easily scraped off with fingernail. Each affected	5
	Large degree: Deep dehydration not easily scraped off, affecting over 10 percent of surface area. Each affected.	10
7 Uniformity of size	Deviation in length or width between the 2 largest and 2 smallest portions that are similarly shaped.	
	Up to ¼ inch	0
	Over ¼ inch and up to ½ inch	3
	Over ½ inch	10
8 Uniformity of weight	Weight ratio of 2 heaviest divided by the 2 lightest.	
	Over 1.0 but not over 1.2	0
	Over 1.2 but not over 1.3	5
	Over 1.3 but not over 1.4	2
	Over 1.4	10
COOKED STATE		
9 Blemishes	Skin (except for Style II) blood spots, bruises and discolorations.	
	Minor: 1 to 6 instances.[1] Each affected	2
	Major: Over 6 instances. Each affected	4
10 Bones	Portions containing bones (potentially harmful). Each affected	10
11 Texture (overall assessment)	Small degree: Moderately dry, soggy, or tough	5
	Large degree: Dry to the point of fibrousness, very mushy, tough, or rubbery skin (Style II).	15

[1] An instance = each ¼-inch square.

(5) "Discoloration" is considered as a deviation in color from that normal to the species present in the portions.

(6) "Dehydration" refers to the presence of dehydrated (water-removed) tissue in the portions. Slight dehydration is surface dehydration which is not colormasking. Deep dehydration is colormasking and cannot be removed by scraping with a blunt instrument.

(7) "Uniformity of size" refers to the degree of uniformity in length and width of the frozen portions. Deviations are measured from the combined lengths of the two shortest and/or the combined widths of the two widest minus the combined widths of the two narrowest in the sample. Deductions are not made for overall deviations in length or width up to ¼ inch.

(8) "Uniformity of weight" refers to the degree of uniformity of the weights of portions. Uniformity is measured by the combined weight of the two heaviest portions divided by the combined weight of the two lightest portions in the sample. No deductions are made for weight ratios less than 1.2 for Type I.

(c) *Examination of sample, cooked state.* Cooked state means the state of the sample after cooking in accordance with instructions accompanying the product. However, if specific instructions are lacking, cooking is accomplished by:

(1) *Boil in bag method.* Insert the sample of frozen portions into a boilable film-type pouch; fold the open end of the pouch over a suspension bar and clamp in place to provide a loose seal after evacuating the air by immersing the pouch into boiling water. Cook the contents for 20 minutes (until the internal temperature of the portions reaches 160° F.).

(2) *Steam method.* Use 10 frozen portions, wrap them individually or in a single layer in aluminum foil, and place the packaged portions on a wire rack suspended over boiling water in a covered container. Steam the packaged portions for 20 minutes.

(3) *Bake method.* Package the 10 frozen portions as previously described. Place the packaged portions on a flat cookie sheet or shallow flat-bottom pan of sufficient size so that the packages can be evenly spread on the sheet or pan. Place the pan and frozen contents in a properly ventilat-

ed oven preheated to 400° F. for 20 minutes.

(d) *Factors examined in cooked state.* (1) "Blemishes" refers to skin (except for Style II), blood spots or bruises, objectionable dark fatty flesh, or extraneous material. Instances of blemishes refer to each occurrence measured by placing a plastic grid market off in ¼-inch squares (1/16 square inch) over the defect area. Each square is counted as 1 whether it is full or fractional.

(2) "Bones" means the presence of potentially harmful bones in a portion. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate.

(3) "Texture defects of the fish flesh and texture of skin in Style II" refers to the absence of the normal textural properties of the cooked fish flesh and to the absence of tenderness of the cooked skin in Style II. Normal textural properties of cooked fish flesh are tenderness, firmness, and moistness without excess water. Texture defects of the cooked flesh are dryness, mushiness, toughness, and rubberiness. Texture defects of the cooked skin in Style II are mushiness, rubberiness, toughness, and stringiness.

(e) *General definitions.* (1) "Small" (overall assessment) refers to a condition that is noticeable but is only slightly objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product.

(4) "Major" (individual assessment) refers to a defect that seriously affects the appearance and/or utility of the product.

(5) "Net weight": The net weight of the portions if glazed shall be determined by the following method:

(i) Weigh the portions with the glaze intact, which gives the gross weight.

(ii) Thaw the glaze from the surfaces of the product with flowing tap water.

(iii) Gently wipe off the excess water from the surfaces with a single water saturated paper towel.

(iv) Weigh the deglazed portions, which gives the net weight.

§ 264.225 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 of this chapter (Regulations Governing Processed Fishery Products).

Subpart D—United States Standards for Grades of Frozen Raw Breaded Fish Sticks

§ 264.251 Description of the product.

Frozen raw breaded sticks are clean, wholesome, rectangular-shaped unglazed masses of cohering pieces (not ground) of fish flesh coated with breading. The sticks are cut from frozen fish blocks; are coated with a suitable, wholesome batter and breading; are packaged, and frozen in accordance with good commercial practice. They are maintained at temperatures necessary for preservation of the product. Frozen raw breaded fish sticks weigh up to and including 1½ ounces; are at least ⅜ inch thick; and their largest dimension is at least 3 times the next largest dimension. All sticks in an individual package are prepared from the flesh of one species of fish.

§ 264.252 Composition of the product.

(a) Frozen raw breaded fish sticks shall contain 72 percent by weight of fish flesh determined by the official end-product method as set forth in § 264.271(f). Fish flesh content may be determined by the on-line method as set forth in § 264.271(g): *Provided,* That the results are consistent with the fish flesh content requirement of 60 percent by weight when verified by the official end-product method.

(b) Production methods employed in official establishments shall be kept relatively constant for each production lot so as to minimize variation in any factors which may affect the relative fish flesh content.

§ 264.253 Grades.

(a) "U.S. Grade A" is the quality of frozen raw breaded fish sticks that: (1)

Possess good flavor and odor and (2) rate a total score of not less than 85 points for those factors of quality that are rated in accordance with the scoring system outlined elsewhere in this part.

(b) "U.S. Grade B" is the quality of frozen raw breaded fish sticks that: (1) Possess at least reasonably good flavor and odor and (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" is the quality of frozen raw breaded sticks that meet the requirements of § 264.251 *Description of product*, but otherwise fail to meet the requirements of "U.S. Grade B."

§ 264.261 Determination of the grade.

The grade is determined by examining the product in the frozen and cooked states and is evaluated by considering the following factors:

(a) *Factors rated by score points.* Points are deducted for variations in the quality of each factor in accordance with the schedule in Table 1. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100; the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling, and tasting, after the product has been cooked in accordance with § 264.271(c).

(1) Good flavor and order (essential requirements for a Grade A product) means that the cooked product has the typical flavor and odor of the indicated species of fish and of the breading and is free from rancidity bitterness, staleness, and off-flavors and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a Grade B product) means that the cooked product is lacking in good flavor and odor but is free from objectionable off-flavors and off-odors of any kind.

§ 264.271 Definitions.

(a) Selection of the sample unit: The sample unit shall consist of 10 frozen raw breaded fish sticks taken at random from one or more packages as required. The fish sticks are spread out on a flat pan or sheet and are examined according to Table 1. Definitions of factors for point deductions are as follows:

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 STICKS

Factors scored	Method of determining score	Deduct
	FROZEN STATE	
1 Condition of package	Small degree: Moderate loose breading and/or moderate frost	2
	Large degree: Excessive loose breading and/or excessive amount frost	5
2 Ease of separation	Minor: Hand separated with difficulty.—Each affected	1
	Major: Separated only by knife or other instrument.—Each affected	2
3 Broken stick	Break or cut greater than ½ length width.—Each affected	10
	Mashed, mechanically and/or physically injured, misshaped or mutilated [1]	
4 Damaged stick	Minor: 1 to 3 instances.—Each affected	2
	Major: Over 3 instances.—Each affected	4
Uniformity		
5 Size	Deviation in length or width between the 2 largest and 2 smallest sticks is:	
	Up to ¼ inch	0
	Over ¼ inch and up to ½ inch	3
	Over ½ inch	10
6 Weight	Weight ratio of the 2 heaviest divided by the 2 lightest sticks:	
	Over 1.0; not over 1.15	0
	Over 1.15; not over 1.3	2
	Over 1.3; not over 1.4	5
	Over 1.4	10

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 STICKS—Continued

Factors scored	Method of determining score	Deduct
	COOKED STATE	
7 Distortion	Minor: Bending, skrinking, twisting (¼ to ½ inch).—Each affected	1
	Major: Excessive bending, shrinking, twisting (over ½ inch).—Each affected.	2
	Bare spots, blistering, ridges, breaks, curds	
8 Coating defects	Minor: 1 to 3 instances.—Each affected	1
	Major: Over 3 instances.—Each affected	2
	Skin, blood spots, bruises, discolorations [1]	
9 Blemishes	Minor: 1 to 6 instances.—Each affected	2
	Major: Over 6 instances.—Each affected	4
10 Bones	Sticks containing bones (potentially harmful).—Each affected	10
Texture		
11 Coating	Small degree: Moderately dry, soggy, doughy or tough	5
	Large degree: Farinaceous (mealy), pasty, very tough	15
12 Fish flesh	Small degree: Moderatley dry, soft, mushy	5
	Large degree: Dry to the point of fibrousness, very mushy tough or rubbery.	15

[1] An instance = each 1/16 square inch (¼-inch square).

(b) Examination of sample, frozen state: (1) "Condition of package" refers to the presence in the package of loose breading and/or loose frost.

(2) "Ease of separation" refers to the difficulty of separating sticks from each other or from packaging material that are frozen together during the freezing.

(3) "Broken stick" means a stick with a break or cut equal to or greater than one-half the width of the stick.

(4) "Damaged stick" means a stick that has been mashed, physically or mechanically injured, misshaped, or mutilated to the extent that its appearance is materially affected. The amount of damage is measured by using a grid composed of squares ¼ inch (that is, squares with an area of 1/16 square inch each) to measure the area of the stick affected. Deductions are not made for damage less than 1/16 square inch.

(5) "Uniformity of size" refers to the degree of uniformity in length and width of the frozen sticks. Deviations are measured from the combined lengths of the two longest minus the combined lengths of the two shortest and/or the combined widths of the two widest minus the combined widths of the two narrowest. Deductions are not made for overall deviations in length or width up to ¼ inch.

(6) "Uniformity of weight" refers to the degree of uniformity of the weights of the sticks. Uniformity is measured by the combined weight of the two heaviest sticks divided by the combined weight of the two lightest sticks. No deductions are made for weight ratios less than 1.15.

(c) Cooked state means the state of the product after cooking in accordance with the instructions accompanying the product. However, if specific instructions are lacking, the product for inspection is cooked as follows: Transfer the product, while still in frozen state, into a wire mesh fry basket large enough to hold the fish sticks in a single layer and cook by immersing 2-3 minutes in 375° F. liquid or hydrogenated cooking oil. After cooking, allow the fish sticks to drain 15 seconds and place the fish sticks on a paper napkin or towel to absorb excess oil.

(d) Examination of sample, cooked state: (1) "Distortion" refers to the degree of bending of the long axis of the stick. Distortion is measured as the greatest deviation from the long axis. Deductions are not made for deviations of less than ¼ inch.

(2) "Coating defects" refers to breaks, lumps, ridges, depressions, blisters, or swells and curds in the coating of the cooked product. Breaks in the coating are objectionable bare spots through which the fish flesh is plainly visable. Lumps are objectionable out-

croppings of breading on the stick surface. Ridges are projections of excess breading at the edges of the fish flesh. Depressions are objectionable visible voids or shallow areas which are lightly covered by breading. Blisters are measured by the swelling or exposed area in the coating resulting from the bursting or breaking of the coating. Curd refers to crater-like holes in the breading filled with coagulated albumin. Instances of these defects are measured by a plastic grid marked off in ¼-inch squares (1/16 square inch). Each square is counted as 1 whether it is full or fractional.

(3) "Blemishes" refers to skin, blood spots or bruises, objectionable dark fatty flesh, or extraneous material. Instances of blemishes refer to each occurrence measured by placing a plastic grid market off in ¼-inch squares (1/16 square inch) over the defect area. Each square is counted as 1 whether it is full or fractional.

(4) "Bones" means the presence of potentially harmful bones in a stick. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate.

(5) "Texture defects of the coating" refers to the absence of the normal textural properties of the coating which are crispness and tenderness. Coating texture defects are dryness, sogginess, mushiness, doughyness, toughness, pastiness as sensed by starchiness or other sticky properties felt by mouth tissues and/or mealiness.

(6) "Texture defects of the fish flesh" refers to the absence of the normal textural properties of the cooked fish flesh which are tenderness, firmness, and moistness without excess water. Texture defects of the flesh are dryness, mushiness, toughness, and rubberyness.

(e) General definitions: (1) "Small" (overall assessment) refers to a condition that is noticeable but is not seriously objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product.

(4) "Major" (individual assessment) refers to a defect that seriously affects the appearance and/or utility of the product.

(f) "Minimum fish flesh content—End-product determination" refers to the minimum percent, by weight, of the average fish flesh content of three frozen raw breaded fish sticks (sample unit for fish flesh determination), as determined by the following method:

(1) *Equipment needed.* (i) Water bath (for example, a 3- to 4-liter beaker).

(ii) Balance accurate to 0.1 gram.

(iii) Clip tongs of wire, plastic, or glass.

(iv) Stop-watch or regular watch readable to a second.

(v) Paper towels.

(vi) Spatula, 4-inch blade with rounded tip.

(vii) Nut pick.

(viii) Thermometer (immersion type) accurate to ±2° F.

(2) *Procedure.* (i) Calculate the weight of three frozen raw breaded fish sticks by dividing the declared net weight on the label by the number of fish sticks indicated on the label to obtain the weight of an individual fish stick and multiply by three. If the number of fish sticks contained in the package is not declared on the label, the actual weight of three frozen raw breaded fish sticks shall be used.

(ii) Using tongs, place each stick individually in the water bath maintained at 63° F. to 120° F. and allow to remain until the breading becomes soft and can easily be removed from the still frozen fish flesh (between 10 to 110 seconds for sticks held in storage at 0° F.).

(iii) At the end of the immersion, remove the fish stick from the water and blot the stick lightly with double thickness paper toweling. This step should be completed in no more than 7 seconds.

(iv) Scrape and remove the breading material and batter from the fish flesh with the spatula removing the softened breading material and batter from the narrow sides and ends of the stick on the initial movements, followed by removing the material from the wider flat surfaces.

(v) Residual batter and breading may remain on some sticks prepared using batters that are difficult to remove after one dipping. When this occurs redip the partially "debreaded" stick in 63° to 86° F. (room temperature) water for approximately 2 seconds. Follow step 3 toweling, and remove the softened residual batter and breading material.

(vi) Weigh all the "debreaded" fish sticks.

(vii) Calculate the percent of fish flesh in the sample unit by the following formula:

Percent fish flesh = Weight of fish flesh (vi)/Weight of three raw breaded fish sticks (i) × 100

Example. The declared net weight of five 1 oz. breaded fish sticks would be 5 ounces. The average weight of three groups of five unbreaded fish sticks would be 3.6 ounces. The percent fish flesh would be 72.

Percent fish flesh = Weight of fish flesh (sample unit) (i) × 100/Declared net weight of raw brealded fish sticks × 5(ii)

(g) "Minimum fish flesh content—Online determination" refers to the minimum percent fish flesh, by weight, of the average weight of three groups of five fish sticks (sample unit for fish flesh determination), as determined by the following:

(1) Equipment needed—Balance accurate to 0.1 gram.

(2) Procedure: (i) Weigh three groups of five raw unbreaded fish sticks from the line. These weights should be recorded and averaged (average weight of three groups of five sticks) and percent fish flesh calculated immediately after the average weights are determined.

(ii) Calculate the percent fish flesh in the sample unit by using the average weight of three groups of five unbreaded fish sticks and the declared net weight of five breaded fish sticks.

(iii) Frequency of on-line fish flesh content determination. A minimum of three determinations of fish flesh content shall be carried out for small production runs or lots, i.e., 3 times (three groups of five unbreaded fish sticks). For larger production runs or lots, a minimum of 1 determination i.e., 1 times (three groups of five unbreaded fish sticks), shall be carried out for every hour of production of product units of the same weight.

§ 264.272 Use of alternate methods of fish flesh determination.

(a) The end-product method in § 264.271(f) for determining fish flesh content shall be used for lot and appeal inspections and may be used for verification inspection.

(b) The on-line method in § 264.271(g) for determining fish flesh content may be used during processing operations.

§ 264.275 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260, Subpart A of this chapter (Regulations Governing Processed Fishery Products).

Subpart E—United States Standards for Grades of Frozen Raw Breaded Fish Portions

§ 264.301 Description of the product.

Frozen raw breaded portions are clean, wholesome, uniformly shaped, unglazed masses of cohering pieces (not ground) of fish flesh coated with breading. The portions are cut from frozen fish blocks; are coated with a suitable, wholesome batter and breading; and are packaged and frozen in accordance with good commercial practice. They are maintained at temperatures necessary for the preservation of the product. Frozen raw breaded fish portions weigh more than 1½ ounces, and are at least ⅜-inch thick. Frozen raw breaded fish portions contain not less than 75 percent, by weight, of fish flesh. All portions in an individual package are prepared from the flesh of one species of fish.

§ 264.302 Styles.

(a) *Style I—Skinless portions.* Portions prepared from fish blocks which have been made with skinless fillets.

(b) *Style II—Skin-on-portions.* Portions prepared from fish blocks which have been made with demonstrably acceptable skin-on fillets.

§ 264.303 Composition of the product.

(a) Frozen raw breaded fish portions shall contain 75 percent by weight of fish flesh determined by the official end-product method as set forth in § 264.321(f). Fish flesh content may be determined by the on-line method as set forth in § 264.321(g): *Provided,* That the results are consistent with the fish flesh content requirement of 75 percent by weight, when verified by the official end-product method.

(b) Production methods employed in official establishments shall be kept relatively constant for each production lot so as to minimize variation in any factors which may affect the relative fish flesh content.

§ 264.304 Grades.

(a) "U.S. Grade A" is the quality of frozen raw breaded fish portions that: (1) Possess good flavor and odor and (2) rate a total score of not less than 85 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(b) "U.S. Grade B" is the quality of frozen raw breaded fish portions that: (1) Possess at least reasonably good flavor and odor and (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" is the quality of frozen raw breaded portions that meet the requirements of § 264.301, *Description of product,* but otherwise fail to meet the requirements of "U.S. Grade B".

§ 264.305 Labeling requirements for styles of frozen raw breaded fish portions.

Section 260.86 (a), (b), and (c) of Part 260 states the requirements for the use of approved grade marks, inspection marks and combined grade and inspection marks on processed fishery products. When an approved inspection mark is used on Style II (§ 264.302) of frozen raw breaded fish portions, that style shall be conspicuously revealed on the label as having been made from "skin-on-fillets".

§ 264.311 Determination of the grade.

The grade is determined by examining the product in the frozen and cooked states and is evaluated in accordance with the following factors:

(a) *Factors rated by score points.* Points are deducted for variations in the quality of each factor in accordance with the schedule in Table 1. The total points deducted is substracted from 100 to obtain the score. The maximum score is 100; the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling and tasting, after the product has been cooked in accordance with § 264.321(c).

(1) Good flavor and odor (essential requirements for a Grade A product) means that the cooked product has the typical flavor and odor of the indicated species of fish and of the breading and is free from rancidity, bitterness, staleness, and off-flavors and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a Grade B product) means that the cooked product is lacking in good flavor and odor but is free from objectionable off-flavors and off-odors of any kind.

§ 264.321 Definitions.

(a) Selection of the sample unit: The sample unit shall consist of 10 frozen raw breaded fish portions taken at random from one or more packages as required. The fish portions are spread out on a flat pan or sheet and are examined according to Table 1. Definitions of factors for point deductions are as follows:

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 PORTIONS

Factors scored	Method of determining score	Deduct
	FROZEN STATE	
1 Condition of package	Small degree: Moderate loose breading and/or moderate frost	3
	Large degree: Excessive loose breading and/or excessive amount frost	6

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 PORTIONS—Continued

Factors scored	Method of determining score	Deduct
2 Ease of separation	Minor: Hand separated with difficulty. Each affected	1
	Major: Separated only by knife or other instrument. Each affected	2
3 Broken portion	Break or cut greater than ½ width or length. Each affected	10
4 Damaged portion	Mashed, mechanically and/or physically injured, misshaped or mutilated:[1]	
	Minor: 1 to 5 instances. Each affected	2
	Major: Over 5 instances. Each affected	4
Uniformity		
5 Size	Deviation in length or width between the 2 largest and 2 smallest portion is:.	
	Up to ¼ inch	0
	Over ¼ inch and up to ½ inch	3
	Over ½ inch	10
6 Weight	Weight ratio of the 2 heaviest divided by the 2 lightest portions:	
	Over 1.2 but not over 1.3	0
	Over 1.3 but not over 1.4	2
	Over 1.4	10
COOKED STATE		
7 Distortion	Minor: Bending, shrinking, testing—¼ to ½ inch. Each affected	1
	Major: Excessive bending, shrinking, twisting—over ½ inch. Each affected.	2
8 Coating defects	Bare spots, blistering, ridges, breaks, curds:[1]	
	Minor: 1 to 6 instances. Each affected	1
	Major: Over 6 instances. Each affected	2
9 Blemishes	Skin (except for style II), blood spots, bruises, and discolorations:[1]	
	Minor: 1 to 6 instances. Each affected	2
	Major: Over 6 instances. Each affected	4
10 Bones	Portions containing bones (potentially harmful). Each affected	10
Texture		
11 Coating	Small degree: Moderately dry, soggy, doughy, or tough	5
	Large degree: Farinaceous (mealy), pasty, very tough	15
12 Fish flesh	Small degree: Moderately dry, soft, mushy	5
	Large degree: Dry to the point of fibrousness, very mushy, tough, or rubbery (skin for style II).	15

[1] An instance = each $1/16$ square inch (¼-inch square).

(b) Examination of sample, frozen state: (1) "Condition of package" refers to the presence in the package of loose breading and/or loose frost.

(2) "Ease of separation" refers to the difficulty of separating the portions from each other or from the packaging material.

(3) "Broken portion" means a portion with a break or cut equal to or greater than one-half the width or length of the portion.

(4) "Damaged portion" means a portion that has been mashed, physically or mechanically injured, misshaped, or mutilated to the extent that its appearance is materially affected. The amount of damage is measured by using a grid composed of squares ¼-inch x ¼-inch (that is, squares with an area of $1/16$ square inch each) to measure the area of the portion affected. No deductions are made for damage of less than $1/16$ square inch.

(5) "Uniformity of size" refers to the degree of uniformity in length and width of the frozen portions. Deviations are measured from the combined lengths of the two longest minus the combined lengths of the two shortest and/or the combined widths of the two widest minus the combined widths of the two narrowest portions in the sample. Deductions are not made for overall deviations in length or width up to ¼ inch.

(6) "Uniformity of weight" refers to, the degree of uniformity of the weights of the portions. Uniformity is measured by the combined weight of the two heaviest portions divided by the combined weight of the two lightest portions in the sample. No deductions are made for weight ratios less than 1.2.

(c) (1) Cooked state means the state of the product after being cooked in accordance with the instructions accompanying the product. If, however, specific instructions are lacking, the product being inspected is cooked as follows:

(2) Transfer the product, while still frozen, into a wire mesh fry basket large enough to hold the fish portions in a single layer and cook by immersing them 3-5 minutes in liquid or hydrogenated cooking oil heated to 350° to 375° F. After cooking, allow the fish portions to drain 15 seconds and place them on a paper napkin or towel to absorb excess oil.

(d) Examination of sample, cooked state: (1) "Distortion" refers to the degree of bending of the long axis of the portion. Distortion is measured as the greatest deviation from the long axis. Deductions are not made for deviations of less than ¼ inch.

(2) "Coating defects" refers to breaks, lumps, ridges, depressions, blisters or swells and curds in the coating of the cooked product. Breaks in the coating are objectionable bare spots through which the fish flesh is plainly visible. Lumps are objectionable outcroppings of breading on the portion surface. Ridges are projections of excess breading at the edges of the portions. Depressions are objectionable visible voids or shallow areas that are lightly covered by breading. Blisters are measured by the swelling or exposed area in the coating resulting from the bursting or breaking of the coating. Curd refers to crater-like holes in the breading filled with coagulated white or creamy albumin. Instances of these defects are measured by a plastic grid marked off in ¼-inch squares (1/16 square inch). Each square is counted as 1 whether it is full or fractional.

(3) "Blemishes" refers to skin (except for Style II), blood spots or bruises, objectionable dark fatty flesh, or extraneous material. Instances of blemishes refers to each occurrence measured by placing a plastic grid marked off in ¼-inch squares (1/16 square inch) over the defect area. Each square is counted as 1 whether it is full or fractional.

(4) "Bones" means the presence of potentially harmful bones in a portion. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate.

(5) "Texture defects of the coating" refers to the absence of the normal textural properties of the coating which are crispness and tenderness. Defects in coating texture are dryness, sogginess, mushiness, doughyness, toughness, pastyness, as sensed by starchiness or other sticky properties felt by mouth tissues and/or mealiness.

(6) "Texture defects of the fish flesh and texture of skin in Style II" refers to the absence of the normal textural properties of the cooked fish flesh and to the absence of tenderness of the cooked skin in Style II. Normal textural properties of cooked fish flesh are tenderness, firmness, and moistness without excess water. Texture defects of the cooked flesh are dryness, mushiness, toughness, and rubberyness. Texture defects of the cooked skin in Style II are mushiness, rubberyness, toughness, and stringiness.

(e) General definitions. (1) "Small" (overall assessment) refers to a condition that is noticeable but is not seriously objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product.

(4) "Major" (individual assessment) refers to a defect that seriously affects the appearance and/or utility of the product.

(f) "Minimum fish flesh content—End-product determination" refers to the minimum percent, by weight, of the average fish flesh content of three frozen raw breaded portions (sample unit for fish flesh determination), as determined by the following method:

(1) *Equipment needed.* (i) Water bath (for example, a 3 to 4 liter beaker).

(ii) Balance accurate to 0.1 gram.

(iii) Clip tongs of wire, plastic, or glass.

(iv) Stop-watch or regular watch readable to a second.

(v) Paper towels.

(vi) Spatula, 4-inch blade with rounded tip.

(vii) Nut pick.

(viii) Thermometer (immersion type) accurate to ±2° F.

(2) *Procedure.* (i) Calculate the weight of three frozen raw breaded portions by dividing the declared net weight on the label by the number of portions indicated on the label to obtain the weight of an individual portion and multiply by three. If the number of portions contains in the package is not declared on the label, the actual weight of three frozen raw breaded portions shall be used.

(ii) Using tongs, place each portion individually in the water bath maintained at 63° F. to 120° F. and allow to remain until the breading becomes soft and can easily be removed from the still frozen fish flesh (between 10 to 110 seconds for portions held in storage at 0° F.).

(iii) At the end of the immersion, remove the fish portion from the water and blot the stick lightly with double thickness paper towelings. This step should be completed in no more than 7 seconds.

(iv) Scrape and remove the breading material and batter from the fish flesh with the spatula removing the softened breading material and batter from the narrow sides and ends of the portion on the initial movements, followed by removing the material from the wider flat surfaces.

(v) Residual batter and breading may remain on some portions prepared using batters that are difficult to remove after one dipping. When this occurs, redip the partially "debreaded" portion in 63° to 86° F. (room temperature) water for approximately 2 seconds. Follow step 3 toweling, and remove the softened residual batter and breading material.

(vi) Weigh all the "debreaded" fish portions.

(vii) Calculate the percent fish flesh in the sample unit by the following formula:

Percent fish flesh=Weight of fish flesh (vi)/Weight of three raw breaded portions (i)×100

(g) "Minimum fish flesh content—On-line determination" refers to the minimum percent fish flesh, by weight, of the average weight of three groups of five portions (sample unit for fish flesh determination), as determined by the following:

(1) Equipment needed—Balance accurate to 0.1 gram.

(2) Procedure:

(i) Weigh three groups of five raw unbreaded portions from the line. These weights should be recorded and averaged (average weight of three groups of five portions) and percent fish flesh calculated immediately after the average weights are determined.

(ii) Calculate the percent fish flesh in the sample unit by using the average weight of three groups of five unbreaded portions and the declared net weight of five finished product units.

Example. The declared net weight of five 4 oz. finished product units would be 20 ounces or 565 grams. The average weight of three groups of five unbreaded portions would be 13 ounces or 424 grams. The percent fish flesh would be 75.

Percent fish flesh=Weight of fish flesh (sample unit (i))/Declared net weight of raw breaded portions×5(ii)×100

(iii) Frequency of on-line fish flesh content determination shall be minimum of three determinations of fish flesh content for small production runs or lots, i.e., 3×(three groups of five unbreaded portions). For larger production runs or lots, a minimum of one determination i.e., 1×(three groups of five unbreaded portions), shall be made for every hour of production of product units of the same weight.

§ 264.322 Use of alternate methods of fish flesh determination.

(a) The end-product method in § 264.321(f) for determining fish flesh content shall be used for lot and appeal inspections and may be used for verification inspection.

(b) The on-line method in § 264.321(g) for determining fish flesh content may be used during processing operations.

§ 264.325 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260. Subpart A of this chapter (Regulations Governing Processed Fishery Products), except that a sample unit shall consist of 10 portions taken at random from one or more packages as required.

Subpart F—United States Standards for Grades of Frozen Fried Fish Sticks

§ 264.351 Description of the product.

Frozen fried fish sticks are clean wholesome, rectangular-shaped unglazed masses of cohering pieces (not ground) of fish flesh coated with breading and partially cooked. The sticks are cut from frozen fish blocks; are coated with a suitable, wholesome batter and breading; are fried, packaged, and frozen in accordance with good manufacturing practices. They are maintained at temperatures necessary for preservation of the product. Frozen fried fish sticks weigh up to and including 1½ ounces; are at least three-eights of an inch thick; and their largest dimension is at least three times the next largest dimension. All sticks in an individual package are prepared from the flesh of one species of fish.

§ 264.352 Composition of the product.

(a) Frozen fried fish sticks shall contain 60 percent by weight of fish flesh determined by the official end-product method as set forth in § 264.371(f). Fish flesh content may be determined by the on-line method as set forth in § 264.371(g): *Provided*, That the results are consistent with the fish flesh content requirement of 60 percent by weight, when verified by the official end-product method.

(b) Production methods employed in official establishments shall be kept relatively constant for each production lot so as to minimize variation in any factors which may affect the relative fish flesh content.

§ 264.353 Grades.

(a) "U.S. Grade A" is the quality of frozen fried fish sticks that: (1) Possess good flavor and odor and (2) rate a total score of not less than 85 points for those factors of quality that are rated in accordance with the scoring system outlined elsewhere in this part.

(b) "U.S. Grade B" is the quality of frozen fried fish sticks that: (1) Possess at least reasonably good flavor and odor and (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" is the quality of frozen fried fish sticks that meet the requirements of § 264.351 *Description of product*, but otherwise fail to meet the requirements of "U.S. Grade B."

§ 264.361 Determination of the grade.

The grade is determined by examining the product in the frozen and cooked states and is evaluated by considering the following factors:

(a) *Factors rated by score points.* Points are deducted for variations in the quality of each factor in accordance with the schedule in Table 1. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100; the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling, and tasting, after the product has been cooked in accordance with § 264.371.

(1) Good flavor and odor (essential requirements for a Grade A Product) means that the cooked product has the typical flavor and odor of the indicated species of fish and of the breading and is free from rancidity, bitterness, staleness, and off-flavors and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a Grade B Product) means that the cooked product is lacking in good flavor and odor but is free from objectable off-flavors and off-odors of any kind.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 STICKS

Factors scored	Method of determining score	Deduct
	FROZEN STATE	
1 Condition of package	Small degree: Loose free oil, and/or moderate loose breading and/or moderate frost.	2
	Large degree: Oil soaking through package and/or excessive loose breading and/or excessive amount frost.	5
2 Ease of separation	Minor: Hand separated with difficulty.—Each affected	1
	Major: Separated only by knife or other instrument.—Each affected	2
3 Broken stick	Break or cut greater than ½ length or width.—Each affected	10
	Mashed, mechanically and/or physically injured, misshaped or multilated [1]	
4 Damaged stick	Minor: 1 to 3 instances.—Each affected	2
	Major: Over 3 instances.—Each affected	4
Uniformity		
5 Size	Deviation in length or width between the 2 largest and 2 smallest sticks is:.	
	Up to ¼ inch	0
	Over ¼ inch and up to ½ inch	3
	Over ½ inch	10
6 Weight	Weight ratio of the 2 heaviest divided by the 2 lightest sticks:	
	Over 1.0; not over 1.15	0
	Over 1.15; not over 1.3	2
	Over 1.3; not over 1.4	5
	Over 1.4	10
	COOKED STATE	
7 Distortion	Minor: Bending, shrinking, twisting (¼ to ½ inch).—Each affected	1
	Major: Excessive bending, shrinking, twisting (over ½ inch).—Each affected.	2
8 Color	Minor: Sticks differing slightly from average color of sticks in sample unit.—Each affected.	2
	Major: Sticks excessively dark or light from average color of sticks in sample unit.—Each affected.	4
	Bare spots, blistering, ridges, breaks, curds [1]	
9 Coating defects	Minor: 1 to 3 instances.—Each affected	1
	Major: Over 3 instances.—Each affected	3
	Skin, blood spots, bruises, discolorations [1]	
10 Blemishes	Minor: 1 to 6 instances.—Each affected	1
	Major: Over 6 instances.—Each affected	3
11 Bones	Sticks containing bones (potentially harmful).—Each affected	10
Texture		
12 Coating	Small degree: Moderately dry, soggy, doughy, oily, and tough	5
	Large degree: Farinaceous (mealy), pasty, very tough and/or oily	15
13 Fish flesh	Small degree: Moderately dry, soft, mushy	5
	Large degree: Dry to the point of fibrousness, very mushy, tough, and rubbery.	15

[1] An instance = each 1/16 square inch (¼-inch square).

§ 264.371 Definitions.

(a) Selection of the sample unit: The sample unit shall consist of 10 frozen fried fish sticks taken at random from one or more packages as required. The fish sticks are spread out on a flat pan or sheet and are examined according to Table 1. Definitions of factors for point deductions are as follows:

(b) Examination of sample, frozen state: (1) "Condition of package" refers to the presence in the package of free excess oil and/or loose breading and/or loose frost.

(2) "Ease of separation" refers to the difficulty of separating sticks from each other or from packaging material that are frozen together after the

frying operation and during the freezing.

(3) "Broken stick" means a stick with a break or cut equal to or greater than one-half the width of the stick.

(4) "Damaged stick" means a stick that has been mashed, physically or mechanically injured, misshaped or mutilated to the extent that its appearance is materially affected. The amount of damage is measured by using a grid composed of squares ¼ inch (that is, squares with an area of 1/16 square inch each) to measure the area of the stick affected. Deductions are not made for damage less than 1/16 square inch.

(5) "Uniformity of size" refers to the degree of uniformity in length and width of the frozen sticks. Deviations are measured from the combined lengths of the two longest minus the combined lengths of the two shortest and/or the combined widths of the two widest minus the combined widths of the two narrowest. Deductions are not made for overall deviations in length of width up to ¼ inch.

(6) "Uniformity of weight" refers to the degree of uniformity of the weights of the sticks. Uniformity is measured by the combined weight of the two heaviest sticks divided by the combined weight of the two lightest sticks. No deductions are made for weight ratios less than 1.15.

(c) Cooked state means the state of the product after cooking in accordance with the instructions accompanying the product. However, if specific instructions are lacking, the product for inspection is cooked as follows: Transfer the product, while still in frozen state, onto a flat pan or sheet of sufficient size to accommodate 10 sticks spaced at least ¼ inch apart. Place the pan and frozen contents in a properly ventilated oven preheated to 400° F. until thoroughly cooked (about 15 to 18 minutes or to an internal temperature of 160° F.).

(d) Examination of sample, cooked state: (1) "Distortion" refers to the degree of bending of the long axis of the stick. Distortion is measured as the greatest deviation from the long axis. Deductions are not made for deviations of less than ¼ inch.

(2) "Color" refers to the reasonably uniform color typical of the sample material.

(3) "Coating defects" refers to breaks, lumps, ridges, depressions, blisters or swells and curds in the coating of the cooked product. Breaks in the coating are objectionable bare spots through which the fish flesh is plainly visible. Lumps are objectionable outcroppings of breading on the stick surface. Ridges are projections of excess breading at the edges of the fish flesh. Depressions are objectionable visible voids or shallow areas which are lightly covered by breading. Blisters are measured by the swelling or exposed area in the coating resulting from the bursting or breaking of the coating. Curd refers to crater-like holes in the breading filled with coagulated albumin. Instances of these defects are measured by a plastic grid marked off in ¼-inch squares (1/16 square inch). Each square is counted as one whether it is full or fractional.

(4) "Blemishes" refers to skin, blood spots, or bruises, objectional dark fatty flesh, carbon specks or extraneous material. Instances of blemishes refers to each occurrence measured by placing a plastic grid marked off in ¼-inch squares (1/16 square inch) over the defect area. Each square is counted as one whether it is full or fractional.

(5) "Bones" means the presence of potentially harmful bones in a stick. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate.

(6) "Texture defects of the coating" refers to the absence of the normal textural properties of the coating which are crispness and tenderness. Coating texture defects are dryness, sogginess, mushiness, doughyness, toughness, pastyness, as sensed by starchiness or other sticky properties felt by mouth tissues; oiliness to the degree of impairment of texture; and/or mealiness.

(7) "Texture defects of the fish flesh" refers to the absence of normal textural properties of the cooked fish flesh, which are tenderness, firmness, and moistness without excess water. Texture defects of the flesh are dryness, softness, toughness, and rubberyness.

(e) General definitions: (1) "Small" (overall assessment) refers to a condition that is noticeable but is not seriously objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product,

(4) "Major" (individual assessment) refers to a defect that seriously affects the appearance and/or utility of the product.

(f) "Minimum fish flesh content—end-product determination" refers to the minimum percent, by weight, of the average fish flesh content of three frozen fried fish sticks (sample unit for fish flesh determination), as determined by the following method:

(1) *Equipment needed.* (i) Water bath (for example, a 3- to 4-liter beaker).

(ii) Balance accurate to 0.1 gram.

(iii) Clip tongs of wire, plastic, or glass.

(iv) Stop-watch or regular watch readable to a second.

(v) Paper towels.

(vi) Spatula, 4-inch blade with rounded tip.

(vii) Nut pick.

(viii) Thermometer (immersion type) accurate to ±2° F.

(2) *Procedure.* (i) Calculate the weight of three frozen fried fish sticks by dividing the declared net weight on the label by the number of fish sticks indicated on the label to obtain the weight of an individual fish stick and multiply by three. If the number of fish sticks contained in the package is not declared on the label, the actual weight of three frozen fried fish sticks shall be used:

(ii) Using tongs, place each stick individually in the water bath maintained at 63° F. to 120° F. and allow to remain until the breading becomes soft and can easily be removed from the still frozen fish flesh (between 10 to 110 seconds for sticks held in storage at 0° F.).

(iii) At the end of the immersion, remove the fish stick from the water and blot the stick lightly with double thickness paper towelings. This step should be completed in no more than 7 seconds.

(iv) Scrape and remove the breading material and batter from the fish flesh with the spatula removing the softened breading material and batter from the narrow sides and ends of the stick on the initial movements, followed by removing the material from the wider flat surfaces.

(v) Residual batter and breading may remain on some sticks prepared using batters that are difficult to remove after one dipping. When this occurs redip the partially "debreaded" stick in 63° to 86° F. (room temperature) water for approximately 2 seconds. Follow step 3 toweling, and remove the softened residual batter and breading material.

(vi) Weigh all the "debreaded" fish sticks.

(vii) Calculate the percent fish flesh in the sample unit by the following formula:

% fish flesh=Weight of fish flesh (vi)/ Weight of three fried fish sticks (i)×100

(g) "Minimum fish flesh content—on-line determination" refers to the minimum percent fish flesh, by weight, of the average weight of three groups of five fish sticks (sample unit for fish flesh determination), as determined by the following:

(1) Equipment needed—balance accurate to 0.1 gram.

(2) Procedure:

(i) Weigh three groups of five raw unbreaded fish sticks from the line. These weights should be recorded and averaged (averge weight of three groups of five sticks) and percent fish flesh calculated immediately after the average weights are determined.

(ii) Calculate the percent fish flesh in the sample unit by using the average weight of three groups of five unbreaded fish sticks and the declared net weight of five fried fish sticks. The declared net weight of five fried fish sticks is obtained by dividing the net weight declaration on the label by the number of fish sticks declared on the label and multiplying by 5. If the number of fish sticks is not declared on the label, the actual weight of five fried fish sticks shall be used.

% fish flesh = Weight of fish flesh (sample unit (i))/Declared or actual net weight of five fried fish sticks × 100

NOTE.—The percent fish flesh determined by the on-line method will usually differ from the percent fish flesh determined by the end-product method due to processing and variations associated therewith.

(iii) Frequency of on-line fish flesh content determination. A minimum of three determinations of fish flesh content shall be carried out for small production runs or lots, i.e., 3 x (three groups of five unbreaded fish sticks). For larger productions runs or lots, a minimum of one determination, i.e., 1 x (three groups of five unbreaded fish sticks) shall be carried out for every hour of production of product units of the same weight.

§ 264.372 Use of alternate methods for determinations fish flesh content.

(a) The official end-product method in § 264.371(f) for determining fish flesh content shall be used for lot and appeal inspections, and for inspections for verification in official establishments when the on-line method is used.

(b) The on-line method in § 264.371(g) for determining fish flesh content may be used in official establishments during processing operations.

§ 264.375 Tolerances for certification of officially drawn samples.

The sample rate and grade of specific lots shall be certified in accordance with Part 260, Subpart A of this chapter (Regulations Governing Processed Fishery Products).

Subpart G—United States Standards for Grades of Frozen Fried Fish Portions

§ 264.401 Description of the product.

Frozen fried fish portions are clean, wholesome, uniformly shaped, unglazed masses of cohering pieces (not ground) of fish flesh coated with breading and partially cooked. The portions are cut from frozen fish blocks; coated with a suitable, wholesome batter and breading; are fried, packaged, and frozen in accordance with good manufacturing practices. They are maintained at temperatures necessary for preservation of the product. Frozen fried fish portions weigh more than 1½ ounces and are at least three-eights of an inch thick. All portions in an individual package are prepared from the flesh of one species of fish.

§ 264.402 Composition of the product.

(a) Frozen fried fish portions shall contain 65 percent by weight of fish flesh determined by the official end-product method as set forth in § 264.421(f). Fish flesh content may be determined by the on-line method as set forth in § 264.421(g): *Provided,* That the results are consistent with the fish flesh content requirement of 65 percent by weight, when verified by the official end-product method.

(b) Production methods employed in official establishments shall be kept relatively constant for each production lot so as to minimize variation in any factors which may affect the relative fish flesh content.

§ 264.403 Grades.

(a) "U.S. Grade A" is the quality of frozen fried fish portions that: (1) Possess good flavor and odor and (2) rate a total score of not less than 85 points for those factors of quality that are rated in accordance with the scoring system outlined elsewhere in this part.

(b) "U.S. Grade B" is the quality of frozen fried fish portions that: (1) Possess at least reasonably good flavor and odor and (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" is the quality of frozen fried fish portions that meet the requirements of § 264.401 *Description of product,* but otherwise fail to meet the requirements of "U.S. Grade B."

§ 264.411 Determination of the grade.

The grade is determined by examining the product in the frozen and cooked states and is evaluated by considering the following factors:

(a) *Factors rated by score points.* Points are deducted for variations in the quality of each factor in accordance with the schedule in Table 1. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100; the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling and tasting, after the product has been cooked in accordance with § 264.421.

(1) Good flavor and odor (essential requirements for a Grade A product) means that the cooked product has the typical flavor and odor of the indicated species of fish and of the breading and is free from rancidity, bitterness, staleness, and off-flavors and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a Grade B product) means that the cooked product is lacking in good flavor and odor but is free from objectionable off-flavors and off-odors of any kind.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 PORTIONS

Factors scored	Method of determining score	Deduct
	FROZEN STATE	
1 Condition of package	Small degree: Loose free oil, and/or moderate loose breading and/or moderate frost.	3
	Large degree: Oil soaking through package and/or excessive loose breading and/or excessive amount frost.	6
2 Ease of separation	Minor: Hand separated with difficulty.—Each affected	1
	Major: Separated only by knife or other instrument.—Each affected	2
3 Broken portion	Break or cut greater than ½ length or width.—Each affected	10
	Mashed, mechanically and/or physically injured, misshaped or mutilated [1]	
4 Damaged portion	Minor: 1 to 3 instances.—Each affected	2
	Major: Over 3 instances.—Each affected	4
Uniformity		
5 Size	Deviation in length or width between the 2 largest and 2 smallest portions is:.	
	Up to ¼ inch	0
	Over ¼ inch and up to ½ inch	3
	Over ½ inch	10
6 Weight	Weight ratio of the 2 heaviest divided by the 2 lightest portions:	
	Over 1.0; not over 1.20	0
	Over 1.20; not over 1.3	3
	Over 1.3; not over 1.4	6
	Over 1.4	10
	COOKED STATE	
7 Distortion	Major: Bending, shrinking, twisting (¼ to ½ inch).—Each affected	1
	Minor: Excessive bending, shrinking, twisting (over ½ inch).—Each affected	2
8 Color	Minor: Portions differing slightly from average color of portions in sample unit.—Each affected.	2
	Major: Portions excessively darker or lighter from average color of portions in sample unit.—Each affected.	4
	Bare spots, blistering, ridges, breaks, curds [1]	
9 Coating defects	Minor: 1 to 3 instances.—Each affected	1
	Major: Over 3 instances.—Each affected	3
	Skin, blood spots, bruises, discolorations [1]	
10 Blemishes	Minor: 1 to 6 instances.—Each affected	1
	Major: Over 6 instances.—Each affected	3
11 Bones	Portions containing bones (potentially harmful).—Each affected	10
Texture		
12 Coating	Small degree: Moderately dry, soggy, doughy, oily and/or tough	5
	Large degree: farinaceous (mealy), pasty, very tough and/or oily	10
13 Fish flesh	Small degree: Moderately dry, soft, mushy	5
	Large degree: Dry to the point of fibrousness, very mushy, tough, and/or rubbery.	15

[1] An instance = each 1/16 square inch (¼-inch square).

§ 264.421 Definitions.

(a) Selection of the sample unit: The sample unit shall consist of 10 frozen fried fish portions taken at random from one or more packages as required. The portions are spread out on a flat pan or sheet and are examined according to Table 1. Definitions of factors for point deductions are as follows:

(b) Examination of sample, frozen state: (1) "Condition of package" refers to the presence in the package of free excess oil and/or loose breading and/or loose frost.

(2) "Ease" of separation refers to the difficulty of separating portions from each other or from packaging material that are frozen together after the frying operation and during the freezing.

(3) "Broken portion" means a portion with a break or cut equal to or greater than one-half the width or length of the portion.

(4) "Damaged portion" means a portion that has been mashed, physically or mechanically injured, misshaped or mutilated to the extent that its appearance is materially affected. The amount of damage is measured by using a grid composed of squares ¼ inch (that is, squares with an area of 1/16 square inch each) to measure the area of the portion affected. Deductions are not made for damage less than 1/16 square inch.

(5) "Uniformity of size" refers to the degree of uniformity in length and width of the frozen portions. Deviations are measured from the combined lengths of the two longest minus the combined lengths of the two shortest and/or the combined widths of the two widest minus the combined widths of the two narrowest. Deductions are not made for overall deviations in length or width up to ¼ inch.

(6) "Uniformity of weight" refers to the degree of uniformity of the weights of the portions. Uniformity is measured by the combined weight of the two heaviest portions divided by the combined weight of the two lightest portions. No deductions are made for weight ratios less than 1.20.

(c) Cooked state means the state of the product after cooking in accordance with the instructions accompanying the product. However, if specific instructions are lacking, the product for inspection is cooked as follows: Transfer the product, while still in frozen state, onto a flat pan or sheet of sufficient size to accommodate 10 portions spaced at least ¼ inch apart. Place the pan and frozen contents in a properly ventilated oven preheated to 420° F. until thoroughly cooked (about 15 to 18 minutes or to an internal temperature of 160° F.).

(d) Examination of sample, cooked state: (1) "Distortion" refers to the degree of bending of the long axis of the portions. distortion is measured as the greatest deviation from the long axis. Deductions are not made for deviations of less than ¼ inch.

(2) "Color" refers to the reasonably uniform color within the sample unit.

(3) "Coating defects" refers to breaks, lumps, ridges, depressions, blisters or swells and curds in the coating of the cooked product. Breaks in the coating are objectionable bare spots through which the fish flesh is plainly visible. Lumps are objectionable outcroppings of breading on the portion surface. Ridges are projections of excess breading at the edges of the fish flesh. Depressions are objectionable visible voids or shallow areas which are lightly covered by breading. Blisters are measured by the swelling or exposed area in the coating resulting from the bursting or breaking of the coating. Curd refers to crater-like holes in the breading filed with coagulated albumin. Instances of those defects are measured by a plastic grid marked off in ¼-inch squares (1/16

square inch). Each square is counted as 1 whether it is full or fractional.

(4) "Blemishes" refers to skin, blood spots or bruises, objectionable dark fatty flesh, carbon specks or extraneous material. Instances of blemishes refers to each occurrence measured by placing a plastic grid marked off ¼-inch squares (¹⁄₁₆ square inch) over the defect area. Each square is counted as 1 whether it is full or fractional.

(5) "Bones" means the presence of potentially harmful bones in a portion. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate.

(6) "Texture defects of the coating" refers to the absence of the normal textural properties of the cooked coating which are crispness and tenderness. Coating texture defects are dryness, sogginess, mushiness, doughyness, toughness, pastyness, as sensed by starchiness or other sticky properties felt by mouth tissues; oiliness to the degree of impairment of texture; and/or mealiness.

(7) "Texture defects of the fish flesh" refers to the absence of the normal textural properties of the cooked fish flesh, which are tenderness, firmness, and moistness without excess water. Texture defects of the flesh are dryness, mushiness, toughness, and rubberyness.

(e) General definitions:

(1) "Small" (overall assessment) refers to a condition that is noticeable but is not seriously objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but also is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product.

(4) "Major" (individual assessment) refers to a defect that seriously affects the appearance and/or utility of the product.

(f) "Minimum fish flesh content—end-product determination" refers to the minimum percent, by weight, of the average fish flesh content of three frozen fried fish portions (sample unit for fish flesh determination), as determined by the following method:

(1) *Equipment needed.* (i) Water bath (for example, a 3- to 4-liter beaker).

(ii) Balance accurate to 0.1 gram.

(iii) Clip tongs of wire, plastic, or glass.

(iv) Stop watch or regular watch readable to a second.

(v) Paper towels.

(vi) Spatula, 4-inch blade with rounded tip.

(vii) Nut pick.

(viii) Thermometer (immersion type) accurate to ±2° F.

(2) *Procedure.* (i) Calculate the weight of three frozen fried fish portions by dividing the declared net weight on the label by the number of fish portions indicated on the label to obtain the weight of an individual fish portion and multiply by three. If the number of fish portions contained in the package is not declared on the label, the actual weight of three frozen fried fish portions shall be used.

(ii) Using tongs, place each portion individually in the water bath maintained at 63° F. to 120° F. and allow to remain until the breading becomes soft and can easily be removed from the still frozen fish flesh (between 10 and 110 seconds for portions held in storage at 0° F.).

(iii) At the end of the immersion, remove the fish portion from the water and blot the portion lightly with double thickness paper towelings. This step should be completed in no more than 7 seconds.

(iv) Scrape and remove the breading material and batter from the fish flesh with the spatula removing the softened breading material and batter from the narrow sides and ends of the portion on the initial movements, followed by removing the material from the wider flat surfaces.

(v) Residual batter and breading may remain on some portions prepared using batters that are difficult to remove after one dipping. When this occurs redip the partially "debreaded" portion in 63° to 86° F. (room temperature) water for approximately 2 seconds. Follow step 3 toweling, and remove the softened residual batter and breading material.

(vi) Weigh all the "debreaded" fish portions.

(vii) Calculate the percent fish flesh in the sample unit by the following formula:

% fish flesh = Weight of fish flesh (vi)/ Weight of three fried fish portions (i) × 100

(g) "Minimum fish flesh content—on-line determination" refers to the minimum percent fish flesh, by weight, of the average weight of three groups of five fish portions (sample unit for fish flesh determination), as determined by the following:

(1) Equipment needed—balance accurate to 0.1 gram.

(2) Procedure:

(i) Weigh three groups of five raw unbreaded fish portions from the line. These weights should be recorded and averaged (average weight of three groups of five portions) and percent fish flesh calculated immediately after the average weights are determined.

(ii) Calculate the percent fish flesh in the sample unit by using the average weight of three groups of five unbreaded fish portions and the declared net weight of five fried fish portions. The declared net weight of five fried fish portions is obtained by dividing the net weight declaration on the label by the number of fish portions declared on the label and multiplying by 5. If the number of fish portions is not declared on the label the actual weight of 5 fried fish portions shall be used.

% fish flesh = Weight of fish flesh (vi)/ Weight of three fried fish portions (i) × 100

NOTE: The percent fish flesh determined by the one-line method will usually differ from the percent fish flesh determined by the end-product method due to processing and variations associated therewith.

(iii) Frequency of on-line fish flesh content determination. A minimum of three determinations of fish flesh content shall be carried out for small production runs or lots, i.e., 3 x (three groups of five unbreaded fish portions). For larger production runs or lots, a minimum of one determination, i.e., 1 x (three groups of five unbreaded fish portions) shall be carried out for every hour of production of product units of the same weight.

§ 264.422 Use of alternate methods for determining fish flesh content.

(a) The official end-product method in § 264.421(f) for determining fish flesh content shall be used for lot and appeal inspections, and for inspections for verification in official establishments when the on-line method is used.

(b) The on-line method in § 264.421(g) for determining fish flesh content may be used in official establishments during processing operations.

§ 264.425 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260, Subpart A of this chapter (Regulations Governing Processed Fishery Products).

PART 265—UNITED STATES STANDARDS FOR GRADES OF CRUSTACEAN SHELLFISH PRODUCTS

Subpart A—United States Standards for Grades of Frozen Raw Headless Shrimp

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265.172 Use of alternate methods of shrimp material determination.
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AUTHORITY: 7 U.S.C. 1621-1630.

SOURCE: 42 FR 52776, Sept. 30, 1977, unless otherwise noted.

Subpart A—United States Standards for Grades of Frozen Raw Headless Shrimp

§ 265.101 Product description.

Frozen raw headless shrimp are clean, wholesome, headless, shell-on shrimp of the regular commercial species. They are sorted for size, packed, and frozen in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product.

§ 265.102 Grades.

(a) "U.S. Grade A" or "U.S. Fancy" is the quality of frozen raw headless shrimp of a single commercial count that possess a good flavor and odor, that are of a reasonably uniform color, and that for those factors which are rated in accordance with the scoring system outlined in the following sections, the total score is not less than 90 points.

(b) "U.S. Grade B" or "U.S. Good" is the quality of frozen raw headless shrimp of a single commercial count that possess at least reasonably good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlined in the following sections, the total score is not less than 80 points.

(c) "U.S. Grade C" or "U.S. Commercial" is the quality of frozen raw headless shrimp of a single commercial count that possesses at least reasonably good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlined in the following sections, the total score is not less than 70 points.

(d) "Substandard" is the quality of frozen raw headless shrimp that fail to meet the requirements of "U.S. Grade C" or "U.S. Commercial."

§ 265.103 Sizes.

The average weight and number of shrimp per pound (count) of frozen raw headless shrimp are not factors of quality in determining the grade of the product. However the degree of conformity of the weights of the individual shrimp to the average weight of shrimp in the sample is rated since it is a factor affecting the utility of the product. Descriptive size names are not recommended. The commercial count (number per pound) and descriptive size names, if used, shall conform to one of the following categories:

Commercial count—Number of shrimp per pound	Number of shrimp per pound (average)		Descriptive size name
	Over—	Not over—	
Under 10		9.9	Extra colossal.
10–15	9.9	15.0	Colossal.
16–20	15.0	20.0	Extra jumbo.
21–25	20.0	25.0	Jumbo.
26–30	25.0	30.0	Extra large.
31–35	30.0	35.0	Large.
36–42	35.0	42.0	Medium large.
43–50	42.0	50.0	Medium.
51–60	50.0	60.0	Small.
61–70	60.0	70.0	Extra small.
Over 70	70.0		Tiny.

§ 265.111 Ascertaining the grade.

(a) *General.* In addition to considering other requirements outlined in the standards, the grade is ascertained by observing the product in the frozen, thawed, and cooked states and is evaluated by considering the following:

(1) *Factors rated by score points.* The quality of the product with respect to factors scored is expressed numerically. Factors rated by score points are: Dehydration; deterioration; black spot on shell or loose membrane only; black spot on meat; broken, damaged, and pieces of shrimp; legs, loose shell, and flippers; heads and unacceptable shrimp; extraneous materials; uniformity of size; and the texture of the cooked product. Cumulative point deductions from the maximum possible score of 100 are assessed for variations of quality for each factor in ac-

cordance with the schedule in Table I. The minimum score is 0.

(2) *Factor not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically after the product has been cooked in a suitable manner, and is defined as follows:

(i) *Good flavor and odor.* "Good flavor and odor" (essential requirement for a Grade A product) means that the product has the good flavor and odor characteristic of freshly caught, chilled shrimp and is free from off-flavors and off-odors of any kind. The presence of iodoform-like flavor and odor is not to be construed as off-flavor and off-odor.

(ii) *Reasonably good flavor and odor.* "Reasonably good flavor and odor" (minimum requirement of Grade B and Grade C products) means that the product may be somewhat lacking in the good flavor and odor characteristic of freshly caught, chilled shrimp but is free from objectionable off-flavors and objectionable off-odors of any kind.

§ 265.121 Definitions and methods of analysis.

(a) "Count," or number of shrimp per pound, is determined by dividing the number of shrimp in the package by the actual net weight in pounds of the shrimp.

(b) "Net weight" of the shrimp is determined as follows:

(1) *Equipment needed.* (i) Container, 4-gallon or more capacity;

(ii) Source of running water that can be maintained at 75°-85° F.; with hose of sufficient length to reach the bottom of the container.

(iii) Balance accurate to 0.01 ounce, or 0.1 gram;

(iv) U.S. standard wire sieve, ASTM No. 20, 12-inch diameter.

(2) *Procedure.* Place the frozen shrimp in the 4-gallon container into which fresh water of a temperature from 75° to 85° F. is introduced from the bottom at a flow of approximately 6 gallons per minute. After any glaze has been removed and the shrimp separate easily, empty the contents of the container through the tared sieve, spreading the shrimp out evenly. Tilt the sieve at approximately a 45-degree angle to facilitate drainage; drain the shrimp for 2 minutes; and then weigh the sieve and contents. The net weight is the weight of the sieve and contents minus the weight of the sieve.

(c) "Cooked in a suitable manner" means that a thawed sample of the product has been cooked by the following method:

Place 2 to 4 ounces of peeled deveined and rinsed shrimp in a boilable plastic bag with ½ cup of salt solution (1 teaspoon salt dissolved in 1 pint or 2 cups of water). Add a 2-ounce stainless steel weight or snap a large clip on bottom of bag. Suspend the bag in a kettle of boiling water and return the water to a boil as rapidly as possible. (More than one sample may be cooked at a time, as long as the water will return to a boil within 2 minutes.) After the water is boiling, cook according to the following timetable:

Count of shrimp—Number per pound	Cooking time (minutes)
Up to 15	12
16 to 35	9
Over 35	6

Remove from bag, drain, and cool to approximately room temperature (do not refrigerate) for evaluation of flavor and odor.

(d) "Dehydration" refers to the occurrence of a whitish area on the exposed ends of the shrimp, due to the drying of the affected area, and to a generally desiccated appearance of the meat after the shell is removed.

(e) "Deterioration" refers to any detectable change from the normal good quality of freshly caught shrimp. It is evaluated by noting deviations of the odor of the thawed product from the normal odor of freshly caught shrimp.

(1) "Slight deterioration" means that the shrimp lack the pleasant odor characteristic of freshly caught shrimp.

(2) "Moderate deterioration" means that the shrimp have slight off-odors.

(3) "Marked deterioration" means that the shrimp have definite off-odors, but are not spoiled.

(4) "Excessive deterioration" means that the shrimp have a definite odor of spoilage. Deductions in this category are made for individual shrimp which are affected.

(f) "Black spot on the shell or loose membrane only" refers to blackened areas at least moderately affecting the appearance of the shrimp.

(1) "Moderately affecting" means that the black spot which occurs at the shell joints extends at least one-third of the circumference of the shrimp at the particular location at which it occurs, and black spot which occurs as a circular area exceeds one-eighth inch in diameter for 31/35 count shrimp or is proportionately larger or smaller for respectively larger or smaller shrimp.

(g) "Black spot on the meat" refers to any darkened area that is present on the shrimp flesh.

(h) "Broken" refers to a shrimp having a break in the flesh greater than one-third of the thickness of the shrimp at the particular location at which it occurs.

(i) "Damaged" refers to a shrimp that is crushed or mutilated so as to materially affect its appearance.

(j) "Piece" refers to any portion of shrimp that contains less than five segments.

(k) "Legs" refers to walking legs only, not swimmerets, or to portions of the head (cephalothorax) with legs and which may be either loose or attached to a shrimp.

(l) "Loose shell" refers to any piece of shell which is completely detached from the shrimp except paper-thin shell from soft-shelled shrimp.

(m) "Flipper" refers to a tail fin, sometimes including the last shell segment but containing no meat.

(n) "Head" means any portion of head (cephalothorax) large enough to contain an eye and which may be either loose or attached to a shimp.

(o) "Unacceptable shrimp" refers to abnormal or diseased shrimp.

(p) "Extraneous material" means any material in the package which is not shrimp material.

(q) "Uniformity of size" is evaluated by computing the actual count per pound of the shrimp in the sample, and then determining, by weighing individual shrimp, the number of shrimp that are slightly large, slightly small, exceedingly large, or exceedingly small for that particular count per pound.

(1) "Slightly large" means that a shrimp is more than 25 percent, but not more than 35 percent larger, by weight, than a shrimp of the actual count per pound.

(2) "Exceedingly large" means that a shrimp is more than 35 percent larger, by weight, than a shrimp of the actual count per pound.

(3) "Slightly small" means that a shrimp is more than 25 percent, but not more than 35 percent smaller, by weight, than a shrimp of the actual count per pound.

(4) "Exceedingly small" means that a shrimp is more than 35 percent smaller, by weight, than a shrimp of the actual count per pound. For use in computing the uniformity of size factor, weights of individual shrimp are given in Table II.

(r) "Texture" defect refers to an undesirable toughness and/or dryness and/or mushiness of the shrimp examined in the cooked state.

§ 265.125 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 of this chapter.

With respect to conformance with the declared commercial count, the lot shall be considered to be of the declared count if the number of deviant units in the sample does not exceed the acceptance number prescribed for the sample size in Part 260 of this chapter. If a lot fails to meet the requirements of any specific commercial count, it shall be marked a mixed lot and shall not be graded.

§ 265.131 Score sheet for frozen raw headless shrimp.

GENERAL

Label ....
Size and kind of container ....
Container mark or identification ....
Size of lot ....
Number of samples ....
Declared count per pound ....
Actual net weight (ounces) ....
Actual count per pound ....
Descriptive size name ....

Scored factors (table I)	Deductions
Frozen and thawed:	
1. Dehydration	
Thawed:	
2. Deterioration	
3. Black spot on shell or loose membrane only	
4. Black spot on meat	
5. Broken, damaged, and pieces	
6. Legs, loose shell, and flippers	
7. Heads and unacceptable shrimp	
8. Extraneous material	
9. Uniformity of size	

Scored factors (table I)	Deductions
Cooked:	
10. Texture	
Total deductions	
Rating for scored factors (100 minus total deductions)	
Flavor and odor	
Final grade	

TABLE I—SCHEDULE OF DEDUCTIONS FOR FACTORS RATED BY SCORE POINTS [1]

Factor	Description of quality variation			Deduct
	Dehydrated—exposed ends		Desiccation of meat—Thawed meat	
	Frozen state	Thawed state		
Dehydration	Up to 5 percent	None	None	0
	5.1 to 15.0 percent	Up to 2.0 percent	Slight	3
	Over 15.0 percent	2.1 to 5.0 percent	Moderate	6
		Over 5.0 percent	Marked	11
	(Percent by count of total sample.) Apply the one highest deduction only.			

Factor	Description of quality variation	Deduct
	THAWED STATE	
Deterioration	Off-odor, overall sample:	
	Slight	2
	Moderate	6
	Marked	21
	Any excessive, each 1 percent or fraction (percent by count)	5
Black spot on shell or loose membrane only.	Shell affected, but not meat:	
	Not over 5 percent	0
	Each additional 5 percent, or fraction (percent by count)	1
Black spot on meat	None	0
	Not over 3 percent	1
	3.1 to 5.0 percent	2
	Each additional 5 percent, or fraction (percent by count)	2
Broken, damaged, and pieces	Not over 1 percent	0
	1.1 to 3.0 percent	2
	Each additional 3 percent, or fraction (percent by weight)	2
Legs, loose shell, and flippers	Not over 3 percent	0
	Each additional 3 percent, or fraction (percent by count)	2
Heads and unacceptable shrimp	Not over 1 percent	2
	Each additional 1 percent, or fraction (percent by count)	3
Extraneous material	1 piece	1
	2 pieces	2
	Over 2 pieces	4
Uniformity of size	Slightly large and slightly small: Each 3 percent, or fraction	1
	Exceedingly large and exceedingly small: Each 3 percent, or fraction (percent by count—based on actual count per pound of sample).	2
	COOKED STATE	
Texture	Tough, dry, or mushy:	
	Slight	2
	Moderate	4
	Excessive	11

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[1] This schedule of point deductions is based on the examination of sample unit composed of: (a) The contents of an entire package or (b) sufficient packages to provide a sample unit of 2 pounds or more, declared net weight.

TABLE II— WEIGHTS OF NONUNIFORM SHRIMP

[Ounces]

Count per pound	Exceedingly large: Over—	Slightly large: Over—	Slightly small: Under—	Exceedingly small: Under—
8	2.70	2.50	1.50	1.30
9	2.40	2.22	1.33	1.16
10	2.16	2.00	1.20	1.04
11	1.96	1.82	1.09	.94
12	1.80	1.67	1.00	.87
13	1.66	1.54	.92	.80
14	1.54	1.43	.86	.74
15	1.44	1.33	.80	.69
16	1.35	1.25	.75	.65
17	1.27	1.18	.71	.61
18	1.19	1.11	.67	.58
19	1.14	1.05	.63	.55
20	1.08	1.00	.60	.52
21	1.03	.95	.57	.50
22	.98	.91	.54	.47
23	.94	.87	.52	.45
24	.90	.83	.50	.43
25	.86	.80	.48	.42
26	.83	.77	.46	.40
27	.80	.74	.44	.38
28	.77	.71	.43	.37
29	.74	.69	.41	.36
30	.72	.67	.40	.35
31	.70	.64	.39	.34
32	.67	.62	.38	.32
33	.65	.61	.36	.32
34	.64	.59	.35	.30
35	.62	.57	.34	.30
36	.60	.56	.33	.29
37	.58	.54	.32	.28
38	.57	.53	.32	.27
39	.55	.51	.31	.27
40	.54	.50	.30	.26
41	.53	.49	.29	.25
42	.51	.48	.29	.25
43	.50	.47	.28	.24
44	.49	.46	.27	.24
45	.48	.44	.27	.23
46	.47	.44	.26	.23
47	.46	.42	.26	.23
48	.45	.42	.25	.22
49	.44	.41	.24	.21
50	.43	.40	.24	.21
51	.42	.39	.24	.20
52	.42	.38	.23	.20
53	.41	.38	.23	.20
54	.40	.37	.22	.19
55	.39	.36	.22	.19
56	.39	.36	.21	.18
57	.38	.35	.21	.18
58	.37	.34	.21	.18
59	.37	.34	.20	.18
60	.36	.33	.20	.17
61	.35	.33	.20	.17
62	.35	.32	.19	.17
63	.34	.32	.19	.16
64	.34	.31	.19	.16
65	.33	.31	.18	.16
66	.33	.30	.18	.16
67	.32	.30	.18	.16
68	.32	.29	.18	.15
69	.31	.29	.17	.15
70	.31	.28	.17	.15
71	.30	.28	.17	.15

ALTERNATE TABLE II—WEIGHTS OF NONUNIFORM SHRIMP

[Grams]

Count per pound	Exceedingly large: Over—	Slightly large: Over—	Slightly small: Under—	Exceedingly small: Under—
8	76.5	70.9	42.5	38.2
9	68.0	62.9	37.7	32.9
10	61.2	56.7	34.0	29.5
11	55.6	51.6	30.9	26.6
12	51.0	47.3	28.4	24.7
13	47.1	43.7	26.1	22.7
14	43.7	40.5	24.4	21.0
15	40.8	37.7	22.7	19.6
16	38.3	35.4	21.3	18.4
17	36.0	33.4	20.1	17.3
18	33.7	31.5	19.0	16.4
19	32.3	29.8	17.9	15.6
20	30.6	28.4	17.0	14.7
21	29.2	26.9	16.2	14.2
22	27.8	25.8	15.3	13.3
23	26.6	24.7	14.7	12.8
24	25.5	23.5	14.2	12.2
25	24.4	22.7	13.6	11.9
26	23.5	21.8	13.0	11.3
27	22.7	21.0	12.5	10.8
28	21.8	20.1	12.2	10.5
29	21.0	19.6	11.6	10.2
30	20.4	19.0	11.3	9.9
31	19.8	18.1	11.0	9.6
32	19.6	17.6	10.8	9.2
33	18.4	17.3	10.2	8.9
34	18.1	16.7	9.9	8.6
35	17.6	16.2	9.6	8.4
36	17.0	15.9	9.4	8.2
37	16.4	15.3	9.1	7.9
38	16.2	15.0	9.0	7.7
39	15.6	14.5	8.8	7.6
40	15.3	14.2	8.5	7.4
41	15.0	[illegible]	8.3	7.2
42	14.4	13.6	8.1	7.0
43	14.2	13.3	7.9	6.9
44	13.9	13.0	7.7	6.7
45	13.6	12.5	7.6	6.6

ALTERNATE TABLE II—WEIGHTS OF NONUNIFORM SHRIMP—Continued

[Grams]

Count per pound	Exceedingly large: Over—	Slightly large: Over—	Slightly small: Under—	Exceedingly small: Under—
46	13.3	12.3	7.4	6.4
47	13.0	12.0	7.2	6.3
48	12.8	11.8	7.1	6.2
49	12.4	11.6	6.9	6.0
50	12.2	11.3	6.8	5.9
51	11.9	11.0	6.8	5.7
52	11.9	10.8	6.5	5.7
53	11.6	10.8	6.5	5.7
54	11.3	10.5	6.2	5.4
55	11.1	10.2	6.2	5.4
56	11.1	10.2	6.0	5.1
57	10.8	9.9	6.0	5.1
58	10.5	9.6	6.0	5.1
59	10.5	9.6	5.7	5.1
60	10.2	9.4	5.7	4.8
61	9.9	9.4	5.7	4.8
62	9.9	9.1	5.4	4.8
63	9.6	9.1	5.4	4.5
64	9.6	8.8	5.4	4.5
65	9.4	8.8	5.1	4.5
66	9.4	8.5	5.1	4.5
67	9.1	8.5	5.1	4.5
68	9.1	8.2	5.1	4.3
69	8.8	8.2	4.8	4.3
70	8.8	7.9	4.8	4.3
71	8.5	7.9	4.8	4.3

Subpart B—United States Standards for Grades of Frozen Raw Breaded Shrimp

§ 265.151 Product description.

Frozen raw breaded shrimp are whole, clean, wholesome, headless, peeled shrimp which have been deveined where applicable of the regular commercial species, coated with a wholesome, suitable batter and/or breading. Whole shrimp consist of five or more segments of unmutilated shrimp flesh. They are prepared and frozen in accordance with good manufacturing practice and are maintained at temperatures necessary for the preservation of the product. Individual shrimp and/or pieces consolidated into larger units and covered with breading are not considered for grading under this standard.

§ 265.152 Composition of the product.

(a) Frozen raw breaded shrimp shall contain not less than 50 percent by weight of shrimp material when the weight of the shrimp material is determined by the end product method as set forth in § 265.171(u).

(b) Shrimp material content of raw breaded shrimp may be determined by the on-line method as set forth in § 265.171(v). *Provided,* That the results are at least in compliance with the shrimp material content requirement of 50 percent by weight when verified by the official end product method.

(c) Production methods employed in official establishments shall be kept relatively constant for each product lot so as to minimize variations in any factor which may affect the relative shrimp material content.

§ 265.153 Styles.

(a) *Style I.* "Regular Breaded Shrimp" are frozen raw breaded shrimp containing a minimum of 50 percent of shrimp material.

(b) *Style II.* "Lightly Breaded Shrimp" are frozen raw breaded shrimp containing a minimum of 65 percent of shrimp material.

§ 265.154 Types.

(a) *Type I—Breaded fantail shrimp*—(1) *Subtype A.* Split (butterfly) shrimp with the tail fin and the shell segment immediately adjacent to the tail fin.

(2) *Subtype B.* Split (butterfly) shrimp with the tail fin but free of all shell segments.

(3) *Subtype C.* Split (butterfly) shrimp without attached tail fin or shell segments.

(b) *Type II—Breaded round shrimp*—(1) *Subtype A.* Round shrimp with the tail fin and the shell segment immediately adjacent to the tail fin.

(2) *Subtype B.* Round shrimp with the tail fin but free of all shell segments.

(3) *Subtype C.* Round shrimp without attached tail fin or shell segments.

(c) *Type III—Breaded split shrimp.* [Reserved]

§ 265.155 Grades.

(a) "U.S. Grade A" is the quality of frozen raw breaded shrimp that when cooked possesses a good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlined in the following sections the total score is not less than 85 points.

(b) "U.S. Grade B" is the quality of frozen raw breaded shrimp that when cooked possesses a reasonably good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlined in the following sections the total score is not less than 70 points.

(c) "Substandard" is the quality of frozen raw breaded shrimp that fail to meet the requirements of "U.S. Grade B."

§ 265.161 Ascertaining the grade.

General. In addition to considering other requirements outlined in the standard, the following quality factors are evaluated in ascertaining the grade of the product.

(a) Factors not rated by score points: Flavor and odor. Flavor and odor are determined by organoleptic means after the product has been cooked in a suitable manner (§ 265.171(u)).

(b) Factors rated by score points: The quality of the product with respect to factors scored is expressed numerically on the scale of 100. Deductions from the maximum possible score of 100 are assessed for essential variations of quality within each factor. The score of frozen raw breaded shrimp is determined by observing the product in the frozen and thawed states.

§ 265.162 Factors evaluated on the product in the breaded state.

(a) Factors affecting qualities that are measured on the product in the breaded state are uniformly of size, condition of coating, extraneous material, and damaged breaded shrimp. For the purpose of rating the factors that are scored in the breaded state, the schedule of point deduction in table 1 applies. This schedule of point deductions is based on the examination of one complete individual package or intended package (sample unit) regardless of the net weight of the contents of the package.

(b) The factor—ease of separation in the frozen state—shall be rated in addition to all other factors when frozen raw breaded shrimp is lot inspected on a lot basis.

§ 265.163 Factors evaluated on unbreaded or thawed debreaded product.

Factors affecting qualities that are measured on the product in the unbreaded or thawed debreaded state are degree of deterioration, dehydrations, sand veins, black spot, extra shell, extraneous material, and swimmerets. For the purpose of rating the factors that are scored in the unbreaded or thawed debreaded state, the schedule of point deductions in table 2 applies. This schedule of point deductions is based on the examination of 20 whole shrimp selected from the processing line or from one or more packages. Examination of this sample of 20 whole shrimp is continued under § 265.171(u).

§ 265.164 Hygienic processing.

Frozen raw breaded shrimp shall be processed and maintained in accordance with the applicable requirements of the Good Manufacturing Practice Regulations contained in Part 128 of Title 21, CFR, and the applicable requirements contained in Part 260 of this chapter.

§ 265.171 Definitions and methods of analysis.

(a) "Fantail shrimp": This type is prepared by splitting and peeling the shrimp except that for Subtype A, the tail fin remains attached and the shell segment immediately adjacent to the tail fin remains attached. Subtype B, the tail fin remains, but the shrimp are free of all shell segments. Subtype C, the shrimp are free of tail fins and all shell segments.

(b) "Round shrimp": This type is the round shrimp, not split. The shrimp are peeled except that for Subtype A, the tail fin remains attached and the shell segment immediately adjacent to the tail fin remains attached. Subtype B, the tail fin remains, but the shrimp are free of all shell segments. Subtype C, the shrimp are free of all shell segments and tail fins.

(c) Good flavor and odor: "Good flavor and odor", essential requirements for a Grade A product, means that the cooked product has flavor and odor characteristics of freshly caught or well-refrigerated shrimp and the breading is free from staleness and off-flavors and off-odors of any kind. Iodoform is not to be considered in evaluating the product for flavor and odor.

(d) Reasonably good flavor and odor. "Reasonably good flavor and odor" minimum requirements of Grade B products, means that the cooked product may be somewhat lacking in the good flavor and odor characteristics of freshly caught or well-refrigerated shrimp but is free from objectionable off-flavors and objectionable off-odors of any kind.

(e) "Dehydration" refers to the occurrence of whitish areas on the exposed ends of the shrimp (due to the drying of the affected area) and to a generally desiccated appearance of the meat after the breading is removed.

(f) "Deterioration" refers to any detectable change from the normal good quality of freshly caught shrimp. It is evaluated by noting in the thawed product deviations from the normal odor and appearance of freshly caught shrimp.

(g) "Extraneous material" consists of nonedible material such as sticks, seaweed, shrimp thorax, or other objects that may be accidently present in the package.

(h) Slight: "Slight" refers to a condition that is scarcely noticeable but does affect the appearance, desirability, and/or eating quality of breaded shrimp.

(i) Moderate: "Moderate" refers to a condition that is conspicuously noticeable but that does not seriously affect the appearance, desirability, and/or eating quality of the breaded shrimp.

(j) Marked: "Marked" refers to a condition that is conspicuously noticeable and that does seriously affect the appearance, desirability, and/or eating quality of the breaded shrimp.

(k) Excessive: "Excessive" refers to a condition tha[illegible]s very noticeable and is seriously ob[illegible]onable and the product cannot [illegible]aded above Grade B; this is a lim[illegible]ile.

(l) Halo: "Halo" means and easily recognized fringe of excess batter and breading extending beyond the shrimp flesh and adhering around the perimeter or flat edges of a split (butterfly) breaded shrimp.

(m) Balling up: "Balling up" means the adherence of lumps of the breading material to the surface of the breaded coating, causing the coating to appear rough, uneven, and lumpy.

(n) Holidays: "Holidays" means voids in the breaded coating as evidenced by bare or naked spots.

(o) Damaged frozen raw breaded shrimp: "Damaged frozen raw breaded shrimp" means frozen raw breaded shrimp that have been separated into two or more parts or that have been crushed or otherwise mutilated to the extent that their appearance is materially affected.

(p) Black spot: "Black spot" means any blackened area that is markedly apparent on the flesh of the shrimp.

(q) Sand vein: "Sand vein" means any black or dark sand vein that has not been removed, except for that portion under the shell segment adjacent to the tail fin when present.

(r) Extra shell: "Extra shell" means any shell segment(s) or portion thereof, contained in the breaded shrimp except the first segment adjacent to the tail fin for Type I, Subtype A, and Type II, Subtype A.

(s) Net weight: Net weight is determined by use of a balance and by following steps given below:

1. Remove the overwrap.
2. Weigh carton and all contents.
3. Transfer breaded shrimp to balance and weigh.
4. Weigh carton less shrimp but including waxed separators and inserts (if used), crumbs, and frost.
5. Remove crumbs and frost from carton and separators.
6. Weigh cleaned carton and separators.
7. Net weight of the shrimp is the weight of the shrimp and of any loose breading and frost, exclusive of packaging material. The amount of loose breading and frost shall not exceed the limits of good manufacturing practices.

(t) Uniformity: "Uniformity" is determined for packs of various sizes by the ratio of the weights of the largest to the smallest breaded shrimp as outlined by the following schedule:

Up to 10 oz	3 largest/3 smallest
10.1 oz. to 1.5 lb	6 largest/6 smallest
1.51 lb. to 2.5 lb	8 largest/8 smallest
Over 2½ lb	10 largest/10 smallest

(u) Percent shrimp material—official end product method:

(1) Equipment needed:

(i) Two-gallon container approximately 9 inches in diameter.

(ii) Two-vaned wooden paddle, each vane measuring approximately 1¾ inches by 3¾ inches.

(iii) Stirring device capable of rotating the wooden paddle at 120 rpm.

(iv) Balance accurate to 0.01 ounce (0.1 gram).

(v) U.S. standard sieve—1/2-inch sieve opening; 12-inch diameter.

(vi) U.S. standard sieve—ASTM—No. 20, 12-inch diameter.

(vii) Forcepts, with blunt points.

(viii) Shallow baking pan.

(ix) Rubber policeman to remove bits of breading from shrimp.

(2) Procedure: (i) Weigh sample (20 shrimp) to be debreaded. Fill container three-fourths full of water at 70°-80° F. Suspend the paddle in the container leaving a clearance of at least 5 inches below the paddle vanes, and adjust speed to 120 rpm. Add shrimp and stir for 10 minutes. Stack the sieves, the ½-inch mesh over the No. 20 and pour contents of container onto them. Set the sieves under a faucet, preferably with spray attached, and rinse the shrimp without rubbing the flesh, being careful to keep all rinsings over the sieves and not having the stream of water hit the shrimp on the sieve directly. Use a rubber policeman to remove adhering breading. Lay the shrimp out singly on the sieve as rinsed, split side down and tails up. Remove top sieve and drain on a 45-degree angle for 2 minutes, then transfer shrimp to balance. Rinse contents of the No. 20 sieve onto a shallow baking pan and collect any particles of shrimp material (flesh, tail fin), and add to shrimp on balance and weigh.

(ii) Calculate percent shrimp material.

% shrimp material = Weight of debreaded sample (20 shrimp)/Weight of sample (20 shrimp) × 100 + 2

(v) Percent shrimp material—on-line method: Percent shrimp material determined by the on-line method refers to the percent by weight of shrimp material in a sample as described below:

(1) Equipment needed:

(i) Water bath (a container with a 3- to 4-liter capacity).

(ii) Balance accurate to 0.1 gram or 0.01 ounce.

(iii) Stop-watch or regular watch readable to a second.

(iv) U.S. Standard sieve—1/2-inch sieve opening; 12-inch diameter.

(v) U.S. Standard sieve ASTM No. 20, 12-inch diameter.

(vi) Thermometer (immersion type accurate to ±2° F.).

(vii) Forceps, with blunt points.

(viii) Shallow pan.

(ix) Rubber policeman to remove bits of breading from shrimp.

(2) Procedure: (i) Select in a random manner, a composite sample of 20 unfrozen raw breaded shrimp from production line(s). Weigh the composite sample on a scale, determining the weight of the sample to the nearest 0.1 gram or 0.01 ounce. Place the sample in a water bath filled to three-fourths capacity and in a container maintained at 60° F.-85° F. After shrimp are submerged in water and breading becomes soft, a "gentle" swirling action with hands may be applied to the shrimp to speed up the removal of the breading. Stack the sieves, the 1/2-inch mesh over the No. 20 and pour contents of container into them. Remove top sieve and drain on 45-degree angle for 2 minutes then transfer shrimp to balance. Rinse contents of No. 20 sieve onto a shallow pan and collect any particles of shrimp material (flesh, tail fin, etc.), and add to the shrimp on the balance and then weigh.

(ii) Calculate percent shrimp material:

% shrimp material = Weight of debreaded sample/Weight of sample × 100

(iii) Frequency of on-line shrimp material content determination. A minimum of three determinations of shrimp material content shall be carried out for small production runs or lots of the same style product, i.e., 3 × (20 unfrozen raw breaded shrimp). For larger production runs or lots of the same style product, a minimum of one determination, i.e., 1 × (20 unfrozen raw breaded shrimp) shall be carried out for every hour of production of product of the same style.

(w) Cooked in a suitable manner: "Cooked in a suitable manner" means cooked in accordance with the instructions accompanying the product. If, however, specific instructions are lacking, the product for inspection is cooked as follows:

(1) Transfer the breaded shrimp, while still frozen, in a wire mesh deep fry basket sufficiently large to hold the shrimp in a single layer without touching one another.

(2) Lower the basket into a suitable liquid oil or hydrogenated vegetable oil at 350°-375° F. Cook for 3 minutes, or until the shrimp attain a pleasing golden brown color.

(3) Remove basket from the oil and allow the shrimp to drain for 15 seconds. Place the cooked shrimp on a paper towel or napkin to absorb the excess oil.

§ 265.172 Use of alternate methods of shrimp material determination.

(a) The official end product method in § 265.171(u) for determining shrimp material content shall be used for lot inspection, appeal inspection, and inspection for verification in official establishments when the on-line method is used.

(b) The on-line method in § 265.171(v)(2) for determining shrimp material content may be used during processing operations.

§ 265.175 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 of this chapter.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS FOR RATING IN BREADED STATE

Factor	Quality description	Ded. allow. Points
1 Ease of separation in the frozen state.	Separate easily after being removed from carton and exposed to room temperature for not more than 4 minutes.	3
	Separate easily after being removed from carton and exposed to room temperature for not more than 6 minutes.	6
	Does not separate easily after being removed from carton and exposed to room temperature for 6 minutes.	10
2 Uniformity	Ratio of weight of largest to smallest breaded shrimp in sample unit as defined under § 265.171(t):.	
	Up to 1.50	0
	1.51-1.60	1
	1.61-1.70	2
	1.71-1.80	3
	1.81-1.90	4
	1.91-2.00	5
	2.01-2.10	6
	2.11-2.20	7
	2.21-2.30	8
	2.31-2.40	9
	Over 2.40	10
3 Condition of coating	Degree of halo or balling up or holidays (identify type of defect by circling the proper word):.	
	Slight—each 20 percent by count or fraction thereof	1
	Moderate—each 20 percent by count or fraction thereof	2
	Marked—each 20 percent by count or fraction thereof	4
	Excessive—each 20 percent by count or fraction thereof	16
4 Damaged breaded shrimp	For each 5 percent by count or fraction thereof	1
	Tail fin broken or missing each 5 percent or fraction thereof (except in Type I, subtype C, and Type II, subtype C).	3
5 Extraneous material	If extraneous material, except filthy or deleterious substances, is found in more than one package per lot, the entire lot shall be declared substandard [1].	

[1] Filthy or deleterious substances in food products constitute a violation of the Food, Drug, and Cosmetic Act. Products containing such substances are ineligible for the purpose of applying this document.

TABLE 2—SCHEDULE OF POINT DEDUCTIONS FOR EXAMINATION IN UNBREADED OR THAWED DEBREADED STATE

[Subtotals brought forward]

Factor	Quality description	Ded. allow. Points
1 Degree of dehydration	Slight—each shrimp	1
	Moderate—each shrimp	2
	Marked—each shrimp	3
	Excessive—each shrimp	16
2 Deterioration	Slight—each shrimp	2
	Moderate—each shrimp	5
	Marked—each shrimp	10
	Excessive—each shrimp (provided that, if excessive deterioration occurs in more than one sample unit per sample, the entire lot shall be declared substandard).	20
3 Sand veins where applicable [1]	For each dark vein present deduct according to the following schedule:	
	Equivalent in length to two segments	1
	Equivalent in length to three segments	2
	Equivalent in length to four or more segments	3
4 Black spot	Slight but obvious, on average	3
	Moderate, on average	
	Marked—each shrimp	63
5 Extra shell (see subtypes definition)	(Beyond first segment adjacent to tail fin only for Type I, subtype A, and Type II, subtype A):	
	Less than one whole extra shell segment	1
	One extra segment or more	3
6 Swimmerets	For last pair only adjacent to tail fins	1
	For more than last pair	3
7 Extraneous material	If extraneous material, except filthy or deleterious substances, are found in more than one package per lot, the entire lot shall be declared substandard.[2]	

[1] Deduction points for sand veins shall not be applied to shrimp smaller than 70 count per pound in the raw, headless state. The corresponding size in the breaded state is 40 count per pound and 80 count per pound in the peeled state.

[2] Filthy or deleterious substances in food products constitute a violation of the Food, Drug, and Cosmetic Act. Products containing such substances are ineligible for the purpose of applying this document.

PART 266—UNITED STATES STANDARDS FOR GRADES OF MOLLUSCAN SHELLFISH

Subpart A—United States Standards for Grades of Frozen Raw Scallops

Sec.

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266.102 Styles.
266.103 Types.
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Subpart B—United States Standards for Grades of Frozen Raw Breaded Scallops and Frozen Fried Scallops

266.151 Product description.
266.152 Styles.

Sec.

266.153 Types.
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266.161 Ascertaining the grade.
266.162 Evaluating the unscored factor of flavor and odor.
266.163 Evaluating and rating the scored factors of appearance, uniformity, workmanship defects, and character.
266.164 Appearance.
266.165 Uniformity.
266.166 Workmanship defects.
266.167 Character.
266.171 Definitions and methods of analysis.
266.175 Tolerances for certification of officially drawn samples.

AUTHORITY: 7 U.S.C. 1621-1630.

SOURCE: 42 FR 52782, Sept. 30, 1977, unless otherwise noted.

Subpart A—United States Standards for Grades of Frozen Raw Scallops

§ 266.101 Description of the product.

Frozen raw scallops are clean, wholesome, adequately drained, whole or cut adductor muscles of the scallop of the regular commercial species. The portion of the scallop used shall be only the adductor muscle "eye" which controls the shell movement. Scallops shall be washed, drained, packed, and frozen in accordance with good manufacturing practices and are maintained at temperatures necessary for the preservation of the product. Only scallops of a single species shall be used within a lot.

§ 266.102 Styles.

(a) *Style I.* Solid pack scallops are frozen together into a solid mass.

(1) *Substyle a.* Glazed.

(2) *Substyle b.* Not glazed.

(b) *Style II.* Individually quick-frozen pack (IQF) scallops are individually quick frozen. Individual scallops can be separated without thawing.

(1) *Substyle a.* Glazed.

(2) *Substyle b.* Not glazed.

§ 266.103 Types.

(a) *Type 1.* Adductor muscle.

(b) *Type 2.* Adductor muscle with catch (gristle or sweet meat) portion removed.

§ 266.104 Grades.

(a) "U.S. Grade A" is the quality of frozen raw scallops that: (1) Possess good flavor and odor and that (2) for those factors that are rated in accordance with the scoring system outlined in this part, have a total score of 85 to 100 points.

(b) "U.S. Grade B" is the quality of frozen raw scallops that: (1) Possess at least reasonably good flavor and odor, and that (2) rate a total score of not less than 70 points for these factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" is the quality of frozen raw scallops that meets the requirements of § 266.101, *Description of the product,* but otherwise fails to meet the requirements of "U.S. Grade B."

§ 266.111 Determination of the grade.

In a plant under Contract USDC Inspection, the grade is determined by examining the product for factors 1-5 in the fresh or thawed state and Factor 6 in the cooked state. For lot inspection, examination of the product for Factor 1 is carried out in the frozen state and 2-5 in the thawed state. Factor 6 is examined in the cooked state.

(a) *Factors rated by score points.* Points are deducted for variation in the quality of each factor in accordance with the schedule in Table 1. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100, the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "Flavor and odor" is evaluated organoleptically by smelling and tasting the product in the cooked state.

(1) Good flavor and odor (essential requirements for a U.S. Grade A product) means that the product has the typical flavor and odor of the species and is free from bitterness, staleness, and off-flavor and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements for a U.S. Grade B product) means the product is lacking in good flavor and odor but is free from objectionable off-flavors and off-odors of any kind.

§ 266.121 Definitions and methods.

(a) *Selection of the sample unit.* The sample unit shall consist of the primary container and its entire contents. The number and size of sample units to be examined shall be as indicated in § 273.25.

(b) *Examination of sample, frozen state.* When this product is examined under Contract USDC Inspection, the samples are examined for Factor 1 in Table 1 in the fresh or thawed state. When the product is lot inspected, the samples are examined for Factor 1, in Table 1 in the frozen state.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE

Factors scored	Method of determining score	Deduct
	FROZEN STATE	
1 Dehydration	Small degree: Easily scraped off of each 10 percent of top surface affected.	
	Large degree: Deep dehydration not easily scraped off, affecting each 10 percent of surface.	24
	FRESH OR THAWED STATE	
1 Undesirable pieces.	Percent by weight:	
	Up to 5 percent	3
	Over 5 percent—not over 10 percent.	6
	Over 10 percent	16
3 Uniformity	Weight ratio:	
	Over 2.5—not over 3.0	4
	Over 3.0—not over 3.3	6
	Over 3.3	10
4 Color	Each 10 percent by count of nonuniform colored scallops in excess of the 10 percent of nonuniform colored scallops permitted.	10
5 Extrananeous material.	Minor: Each instance of minor extraneous material in the sample unit per pound.	1
	Major: Each instance of major extraneous material in the sample unit per pound.	5
	COOKED STATE	
6 Texture	Firm but tender and moist	0
	Small degree: Moderately tough, dry, and fibrous or mushy.	5
	Large degree: Excessively tough, dry and fibrous or mushy.	15

(1) "Dehydration" refers to the loss of moisture from the scallops surface during frozen storage. Small degree of dehydration is color-masking but can be easily scraped off. Large degree of dehydration is deep, color-masking, and requires a knife or other instrument to scrape it off.

(c) *Examination of sample, thawed state.* When necessary, thawing the sample is best accomplished by enclosing it in a water impermeable film-type bag and immersing in an agitated water bath at 68° F.±2° F. The complete thawing of the product is determined by gently squeezing the bag occasionally until no hard core or ice crystals are felt.

(1) Undesirable small pieces are pieces which will pass through the openings in a ¾-inch sieve for larger size scallops. For the smaller scallops, such as bay scallops, undesirable pieces are pieces of scallops that do not have the general conformation of the other scallops. The total weight of these pieces within a sample unit will be obtained. These pieces shall not be used for determining the weight ratio.

(2) Uniformity of size refers to the degree of weight uniformity of the individual scallops. This factor is measured by obtaining a weight ratio between the largest and smallest scallops. The determination is made on the thawed scallops by dividing the total weight of the 15 percent (by count) of the largest scallops by the 15 percent (by count) of the smallest scallops.

(3) "Color" refers to reasonably uniform color characteristics of the species used within an individual container. Only noticeable variation in color from the predominating color of the scallops in the container is considered. Medium gray to black colored scallops are not to be graded.

(4) "Extraneous materials" are pieces or fragments of undesirable material that are naturally present in or on the scallops and which should be removed during processing.

(i) An instance of minor extraneous material includes but is not limited to each occurrence of intestines, seaweed, etc., and each aggregate of sand and grit up to ½-inch square and located on the scallop surface. Deduction points shall be assessed for additional instances of intestines, seaweed, etc., and aggregates of sand and grit up to ½-inch square.

(ii) An instance of major extraneous material includes but is not limited to each instance of shell or aggregate of embedded sand or other extraneous embedded material that affects the appearance or eating quality of the product.

(d) *Examination of sample, cooked state.* Cooked state means the state of the sample after being cooked. Place at least 25 percent by weight of the thawed sample from each sample unit into a boilable film-type pouch and seal. Submerge the pouch and its contents into boiling water for about 3 or 4 minutes or until cooked. Alternatively the product is placed into a baking pan lined with aluminum foil. A cover of aluminum foil is crimped around the edges of the top of the pan. The pan is placed in an oven that has been pre-heated to 450° F. for 20 minutes or until cooking has been completed. Flavor and odor and texture shall be evaluated in the cooked state.

(1) "Texture" refers to the firmness, tenderness, and moistness of the cooked scallop meat, which is characteristic of the species.

(e) *General definitions.* (1) "Small" (overall assessment) refers to a condition that is noticeable but is only slightly objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product.

(4) "Major" (individual assessment) refers to a defect that seriously affects the appearance and/or utility of the product.

(5) "Net weight" means the total weight of the scallop meats within the package after removal of all packaging materials, ice glaze, or other protective materials.

§ 266.125 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 of this chapter (Regulations Governing Processed Fishery Products).

Subpart B—United States Standards for Grades of Frozen Raw Breaded Scallops and Frozen Fried Scallops

NOMENCLATURE CHANGE: 44 FR 32393, June 6, 1979.

§ 266.151 Product description.

(a) *Frozen raw breaded scallops*—Frozen raw breaded scallops are: (1) Prepared from wholesome, clean, adequately drained, whole or cut adductor muscles of the scallop of the regular commercial species, or scallop units cut from a block of frozen scallops that are coated with wholesome batter and breading; (2) packaged and frozen according to good commercial practice and maintained at temperatures necessary for preservation; and (3) composed of a minimum of 50 percent by weight of scallop meat.

(b) *Frozen fried scallops*—Frozen fried scallops are: (1) Prepared from wholesome, clean, adequately drained, whole or cut adductor muscles of the scallop of the regular commercial species, or scallop units cut from a block of frozen scallops that are coated with wholesome batter and breading; (2) precooked in oil or fat; (3) packaged and frozen according to good commercial practice and maintained at temperatures necessary for preservation; and (4) composed of a minimum of 50 percent by weight of scallop meat.

[44 FR 32392, June 6, 1979]

§ 266.152 Styles.

The styles of frozen raw breaded scallops and frozen fried scallops include:

(a) *Style I Random pack.* Scallops in a package are reasonably uniform in weight and/or shape. The weight or shape of individual scallops are not specified.

(b) *Style II Uniform pack.* Scallops in a package consist of uniform shaped pieces which are of specified weight or range of weights.

§ 266.153 Types.

(a) *Type 1.* Adductor muscle.

(b) *Type 2.* Adductor muscle with catch (gristle or sweet meat) portion removed.

[44 FR 32392, June 6, 1979]

§ 266.154 Grades.

(a) "U.S. Grade A" is the quality of frozen raw breaded scallops and frozen fried scallops that possess good flavor and odor; and for those factors of quality which are rated according to the scoring system outlined in this part, the total score is not less than 85 points.

(b) "U.S. Grade B" is the quality of frozen raw breaded scallops and frozen fried scallops that possess at least reasonably good flavor and odor; and for those factors of quality which are rated according to the scoring system outlined in this part, the total score is not less than 70 points.

(c) "Substandard" is the quality of frozen raw breaded scallops and frozen fried scallops that fail to meet the requirements of U.S. Grade B.

[42 FR 52782, Sept. 30, 1977. Redesignated and amended at 44 FR 32392, June 6, 1979]

§ 266.161 Ascertaining the grade.

The grade of frozen raw breaded scallops and frozen fried scallops is determined by examining the product in the frozen and cooked states. Factors of quality evaluated in ascertaining the grade of the product are flavor and odor appearance, uniformity, absence of defects, and character.

(a) Flavor and odor are rated directly by organoleptic evaluation. Score points are not assessed (see § 266.162).

(b) Appearance, uniformity, absence of defects, and character are rated numerically on a scale of 100. The maximum number of points that may be given each of these factors are:

Factors	Points
Appearance	[1] 25
Uniformity	[1] 20
Absence of defects	40
Character	[1] 15
Total possible score	100

[1] Frozen raw breaded scallops and frozen fried scallops which receive the maximum number of deduction points for any of these factors shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

§ 266.162 Evaluating the unscored factor of flavor and odor.

(a) "Good flavor and odor" (essential requirements for a Grade A product) means that the cooked product has flavor and odor characteristics of good scallop meat and of the breading and is free from staleness and off-flavors and off-odors of any kind.

(b) "Reasonably good flavor and odor" (minimum requirements of a Grade B product) means that the cooked product is lacking in good flavor and odor, but is free from objectionable off-flavors and off-odors of any kind.

(c) "Substandard flavor and odor" (Substandard grade) means that the flavor and odor fails to meet the minimum requirements of "reasonably good flavor and odor."

§ 266.163 Evaluating and rating the scored factors of appearance, uniformity, workmanship defects, and character.

Point deductions are allotted for each degree or amount of quality variation within each of the factors that are scored. The net score for each quality factor is obtained by subtracting the deduction-points assessed for that factor from the maximum points allotted to that factor. The total score for the product is the sum of the net scores for the four individually scored factors.

§ 266.164 Appearance.

(a) Appearance refers to the condition of the package and ease of separation in the frozen state and continuity and color in the cooked state.

(1) "Condition of the package" refers to freedom from packaging defects and the presence in the package of oil, and/or loose breading, and/or frost. Deduction points are based on the degree of the improper condition as small or large.

(2) "Ease of separation" refers to the difficulty of separating scallops that are frozen together after the frying operation and during freezing.

(3) "Continuity" refers to the completeness of the coating of the product in the cooked state. Lack of continuity is exemplified by breaks, ridges and/or lumps of breading. Each 1/16 square inch area of any break, ridge, or lump of breading is considered an instance of lack of continuity. Individual breaks, ridges, or lumps of breading measuring less than 1/16 square inch are not considered objectionable. Deduction points are based on the percentage of the scallops within the package that contain small and/or large instances of lack of continuity.

(4) "Color" refers to reasonably uniform color which is characteristic of the product in the cooked state.

Deviations in color are visually measured as "small" and "large". A "small" instance of deviation in color means that the scallop varies noticeably from the predominating color of the package. A "large" instance of deviation in color means that the scallop varies markedly from the predominating color of the package. The deduction points assessed are based on the degree of deviation as small or large and the percentage by count of the scallops affected in the package.

(b) For the purpose of rating the factor of appearance, the schedule of deduction points in Table I applies. Frozen raw breaded scallops and frozen fried scallops which receive 25 deduction points for the factor of appearance shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE I—SCHEDULE OF POINT-DEDUCTIONS FOR VARIATIONS IN APPEARANCE

Appearance subfactors	Method of determining subfactor score	Ded. points
	Degree of condition of the package	
Condition of the package in the frozen state.	(a) Small (moderate amount of free oil and/or loose breading, and/or frost, and/or packaging defects).	2
	(b) Large (excessive amount of free oil, and/or loose breading, and/or frost, and/or packaging defects).	5

Appearance subfactors	Method of determining subfactor score	Percent of scallops affected		Ded. points
		Over—	Not over—	
	Degree of ease of separation			
Ease of separation of the scallops in frozen state.	Moderate (scallops separated by hand with difficulty)	0	30	1
		30	70	2
		70	—	3
	Severe (scallops separated only by use of knife or other instrument).	0	30	4
		30	70	10
		70	—	15
Continuity of the scallops in the cooked state.	Lack of continuity (breaks, ridges, and lumps)[1]	0	20	2
		20	50	4
		50	70	6
	Small (1 to 3 instances per scallop)	70	—	10
		0	20	4
	Large (over 3 instances per scallop)	20	50	8
		50	70	12
		70	—	25
	Deviation from predominating color of fried scallops in cooked state			
Color of the scallops in the cooked state.	Small instance of deviation in color means that the scallop varies noticeably from the predominating color of the package after cooking.	0	10	0
		10	30	2
		30	—	4
	Large instance of deviation in color means that the scallop varies markedly from the predominating color of the package after cooking.	0	10	4
		10	30	10
		30	—	25

[1] Each 1/16 square inch is considered an instance.

§ 266.165 Uniformity.

(a) Uniformity refers to the degree of freedom from undesirably small pieces and to the degree of uniformity of the weights of the frozen raw breaded scallops and frozen fried scallops within the package.

(1) For Style I, deduction points are assessed for: (i) Undesirable small pieces as determined by the percent by count of pieces passing through a sieve with ¾ inch openings, and (ii) uniformity of size of the scallops remaining in the sieve as determined by the ratio of the weight of the 15 percent largest scallops (minimum three) divided by the 15 percent smallest scallops (minimum three). The number constituting this percentage shall be the closest approximation of 15 percent, determined by count.

(2) For Style II, deduction points are based on the percentage by count of

small or large scallops deviating from the average weight within the package.

(b) For the purpose of rating the factor of uniformity, the schedules of deduction points in Table II apply. Frozen raw breaded scallops and frozen fried scallops which receive 20 deduction points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE II—SCHEDULE OF POINT-DEDUCTIONS FOR UNIFORMITY

Factor	Method of determining subfactor score	Percent of scallops affected		Ded. points
		Over—	Not over—	
	A. Style I (Random pack)			
	(a) Undesirable small pieces which pass through a sieve with ¾ inch openings.	0	10	3
		10	20	6
		20	—	10
Uniformity of size and weight of scallops in frozen state.	(b) Weight ratio of scallops remaining in the sieve. The 15 percent largest scallops (minimum 3) divided by the 15 percent smallest scallops (minimum 3). The 15 percent to be determined by count.	—	[1]2.0	[1]0
		[1]2.0	[1]2.5	[1]1
		[1]2.5	[1]2.9	[1]3
		[1]2.9	[1]3.3	[1]6
		[1]3.3	—	[1]10
	B. Style II (Uniform pack)			
	Deviation from average weight			
	(a) Small (scallops deviating ± 10 to 20 percent from average weight).	0	30	3
		30	70	5
		70	—	10
	(b) Large (scallops deviating over ± 20 percent from average weight).	0	30	6
		30	70	10
		70	—	20

[1] Ratio.

§ 266.166 Workmanship defects.

(a) Workmanship defects refer to the degree of freedom from doubled and misshaped scallops and extraneous material. The defects of doubled and misshaped scallops are determined by examining the frozen product, while the defects of extraneous materials are determined by examining the product in the cooked state. Deduction points are based on the percentage by count of the scallops affected within the package.

(1) *Doubled scallops.* Two or more scallops that are joined together during the breading and/or frying operations.

(2) *Misshaped scallops.* Elongated, flattened, mashed or damaged scallop meats.

(3) *Extraneous material.* Extraneous materials are pieces or fragements of undesirable material that are naturally present in or on the scallops and which should be removed during processing.

(i) Examples of minor extraneous material include intestines, seaweed, and each aggregate of sand and grit within an area of ½-inch square.

(ii) Examples of major extraneous material include shell, aggregate of embedded sand or other extraneous embedded material that affects the appearance or eating quality of the product.

(b) For the purpose of rating the absence of defects, the schedule of deduction points in Table III applies.

TABLE III—SCHEDULE OF POINT DEDUCTIONS FOR WORKMANSHIP DEFECTS, SUBFACTORS, MISSHAPED OR DOUBLED SCALLOPS, AND EXTRANEOUS MATERIAL

Defect subfactors	Method of determining subfactor score	Percent of scallops affected		Deduction points
		Over—	Not over—	
Misshaped or doubled scallops in the frozen state.	Misshaped scallops (elongated, flattened, mashed, or damaged scallop meats).	0	10	3
		10	20	7
		20		15
	Doubled scallops (2 or more scallops joined together during breading and/or frying operation).			
Extraneous material in the cooked state	Minor: Each instance of minor extraneous material in the sample unit per pound.			1
	Major: Each instance of major extraneous material in the sample unit per pound.			5

[42 FR 52782, Sept. 30, 1977, as amended at 44 FR 32392, June 6, 1979]

§ 266.167 Character.

(a) Character refers to the texture of the scallop meat and of the coating and the presence of gristle in the cooked state. Deduction points are based on the degree of variaion in the texture attributes of the coating and scallop meat or the relationship between the number of instances and the number of scallops within the package.

(1) *Gristle.* Gristle (type 2 only) is the tough elastic tissue usually attached to the scallop meat. Each instance of gristle is an occurrence.

(2) *Texture* refers to the firmness, tenderness, and moistness of the cooked scallop meat and to the crispness and tenderness of the coating of the cooked product. The texture of the scallop meat may be classified as a degree of mushiness, toughness, and fibrousness. The texture of the coating may be classified as a degree of pastiness, toughness, dryness, mushiness, or oiliness.

(b) For the purpose of rating the factor of character, the schedules of deduction points in Tables IV and V apply. Frozen raw breaded scallops and frozen fried scallops which receive 15 deduction points for the factor of character shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

[42 FR 52782, Sept. 30, 1977, as amended at 44 FR 32392 June 6, 1979]

TABLE IV—SCHEDULE OF POINT-DEDUCTIONS FOR CHARACTER SUBFACTOR OF TEXTURE

Character subfactors	Method of determining subfactor score	Ded. points
Texture in the cooked state	Texture of the coating	
	Firm or crisp but not tough, pasty, mushy, or oily	0
	Moderately tough, pasty, mushy, or oily	5
	Excessively tough, pasty, mushy, or oily	15
	Texture of the scallop meat	
	Firm, but tender and moist	0
	Moderately tough, dry, and/or fibrous or mushy	5
	Excessively tough, dry, and/or fibrous or mushy	15

TABLE V—SCHEDULE OF POINT-DEDUCTIONS FOR CHARACTER SUBFACTOR OF GRISTLE

Number of scallops per 7 ounces	Number of instances of gristle								
	0	1	2	3	4	5	6	7	8 or more
	Point deductions								
10 or less	0	2	4	6	8	10			
11	0	2	4	6	8	10			
12	0	2	4	6	8	10			
13	0	1	3	5	8	10			
14	0	1	3	5	7	9	10		
15	0	1	2	4	6	8	10		
16	0	1	2	4	6	8	10		
17	0	1	2	4	6	8	10		
18	0	1	2	3	4	6	8	10	
19	0	1	2	3	4	6	8	10	
20 or more	0	1	2	3	4	6	8	10	

§ 266.171 Definitions and methods of analysis.

(a) *Percent of scallop meat* refers to percent, by weight, of scallop meat in a sample as determined by the following method:

(1) *Equipment needed.* (i) Water bath (3 to 4 liter beaker).

(ii) Balance accurate to 0.1 gram.

(iii) Clip tongs of wire, plastic, or glass.

(iv) Stop-watch or regular watch with second hand.

(v) Paper towels.

(vi) Spatula, 4-inch blade with rounded tip.

(2) *Procedure.* (i) Weigh all scallops in the sample while still in a hard frozen condition.

(ii) Place each scallop individually in the water bath which is maintained at 63° to 86° F. and allow the scallop to remain until such time as the breading becomes soft and can easily be removed from the still frozen meat (between 10 to 30 seconds for scallops held in storage at 0° F.).

(iii) Remove the scallop from the bath; blot lightly with double thickness paper toweling; and scrape off or pick out coating from the scallop meat with the spatula or nutpicker.

(iv) Weigh all "debreaded" scallop meats.

(v) Calculate the percent of scallop meat in the sample by the following formula:

"Percent Scallop meat = weight of scallop meat (iv)/weight of frozen fried or breaded scallops (i) × 100"

(b) *Cooked state.* Cooked state shall mean that the product shall be cooked in accordance with the instructions accompanying the product.

(1) If specific instructions are lacking for fried scallops, the product for inspection shall be cooked as follows: Spread the frozen scallops on a foil covered baking sheet or a shallow pan. Place sheet or pan in frozen content at the mid-point of a properly ventilated oven preheated to 400 degrees Fahrenheit until thoroughly cooked, 15 to 20 minutes.

(2) If specific instructions are lacking for the breaded scallops, the product for inspection shall be cooked as follows: Place frozen, breaded product in wire mesh fry basket large enough to hold all items in single layer. Heat by immersing in 375° F (190° C) edible cooking oil 2-3 minutes or until items float to surface. After cooking, let items drain 15 seconds and place on paper napkin or towel to absorb excess oil.

(c) *Definitions.* (1) "Moderate" refers to a scored condition that is readily noticeable but is not seriously objectionable.

(2) "Excessive" refers to a condition that is very noticeable and is seriously objectionable.

(3) "Instance" refers to an occurance of an individual scored subfactor on a scallop.

[42 FR 52782, Sept. 30, 1977, as amended at 44 FR 32392, June 6, 1979]

§ 266.175 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 of this chapter.

SUBCHAPTER H—TUNA FISHERIES

PART 280—PACIFIC TUNA FISHERIES

Sec.
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280.17 Recordkeeping and written reports.
280.18 Persons and vessels exempted.
280.19 National Oceanic and Atmospheric Administration Employee designated as enforcement agents.
280.20 State Officers designated as enforcement agents.

AUTHORITY: 64 Stat. 777, as amended (16 U.S.C. 951), as modified by Reorganization Plan No. 4, effective Oct. 3, 1970 (35 FR 15627), unless otherwise noted.

SOURCE: 42 FR 25864, May 20, 1977, unless otherwise noted.

§ 280.1 Definitions.

For the purposes of this part, the following terms shall be understood to mean:

(a) *United States.* All areas under the sovereignty of the United States, the Trust Territory of the Pacific Islands, and the Canal Zone.

(b) *Convention.* The Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington, D.C., May 31, 1949, by the United States of America and the Republic of Costa Rica (1 U.S.T. 230).

(c) *Commission.* The Inter-American Tropical Tuna Commission established pursuant to the Convention.

(d) *Director of investigations.* The Director of Investigations, Inter-American Tropical Tuna Commission, La Jolla, California.

(e) *Service director.* The Director of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

(f) *Regional director.* The Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California, telephone number, area code, 213, 548-2575.

(g) *Regulatory area.* All waters of the eastern Pacific Ocean bounded by the mainland of the Americas and the following lines: Beginning at a point on the mainland where the parallel of 40° N. latitude intersects the coast; thence due west to the meridian of 125° W. longitude; thence due south to the parallel of 20° N. latitude; thence due east to the meridian of 120° W. longitude; thence due south to the parallel of 5° N. latitude; thence due east to the meridian of 110° W. longitude; thence due south to the parallel of 10° S. latitude; thence due east to the meridian of 90° W. longitude; thence due south to the parallel of 30° S. latitude; thence due east to a point on the mainland where the parallel of 30° S. latitude intersects the coast. For 1978 only, exclude from the regulatory area on an experimental basis the three areas defined as follows:

(1) The area encompassed by a line drawn commencing at 110° W. longitude and 5° N. latitude extending east along 5° N. latitude to 95° W. longitude; thence south along 95° W. longitude to 3° S. latitude; thence east along 3° S. latitude to 90° W. longitude to 10° S. latitude; thence west along 10° S. latitude to 110° W. longitude; thence north along 110° W. longitude to 5° N. latitude;

(2) The area encompassed by a line drawn commencing at 115° W. longitude and 5° N. latitude extending west along 5° N. latitude to 120° W. longitude; thence north along 120° W. longitude to 20° N. latitude; thence east along 20° N. latitude to 115° W. longi-

tude; thence south along 115° W. longitude to 5° N. latitude;

(3) The area encompassed by a line drawn commencing at 90° W. longitude and 12° S. latitude extending east along 12° S. latitude to 85° W. longitude; thence south to 15° S. latitude; thence east to 80° W. longitude; thence south to 30° S. latitude; thence west to 90° W. longitude; thence north to 12° S. latitude.

(h) *Yellowfin tuna.* No other fishes except the species *Thunnus albacares.*

(i) *Mingled species.* (1) Any species of billfish or shark; and (2) No other species of the family Scombridae except: Skipjack (*Genus Euthynnus*), bigeye (*Thunnus obesus*), bluefin (*Thunnus thynnus*), albacore (*Thunnus alalaunga*), or bonito (*Sarda chiliensis*).

(j) *Fishing vessel.* All watercraft subject to the jurisdiction of the United States which are used for catching or processing fish, except purse seine skiffs.

(k) *Fishing voyage.* The period between the date a fishing vessel departs from any port to carry out fishing operations and the date such vessel unloads any of its catch or the date such vessel returns to port for the express purpose of receiving an inspection by a designated agent of the National Marine Fisheries Service or the date such vessel's catch is officially verified by a National Marine Fisheries Service observer.

(l) *Cargo vessel.* All watercraft which are used for transporting fish or fish products, except fishing vessels.

(m) *Person.* Individual, association, corporation, or partnership subject to the jurisdiction of the United States.

(n) *Open season.* The time during which yellowfin tuna may lawfully be captured without limitation by any fishing vessel operating within the regulatory area.

(o) *Closed season.* The time during which yellowfin tuna may not be captured in the regulatory area, except in limited quantities as an incident to fishing for species with which yellowfin tuna may be mingled.

(p) *Port facility in the Americas.* All port facilities in North, South and Central America, including all the Caribbean ports, but excluding ports in Argentina, Brazil and Uruguay.

[42 FR 25864, May 20, 1977, as amended at 43 FR 29789, July 11, 1978]

§ 280.2 Basis and purpose.

(a) At a special meeting held at Long Beach, Calif., on September 14, 1961, the Commission recommended to the Governments of Costa Rica, Ecuador, Panama, and the United States of America, parties to the Convention, that they take joint action to limit the annual catch of yellowfin tuna from the eastern Pacific Ocean by fishermen of all nations during the calendar year 1962. This recommendation was made pursuant to paragraph 5 of Article II of the Convention on the basis of scientific investigations conducted by the Commission over a period of time dating from 1951. The most recent years of this period were marked by a substantial increase in fishing effort directed toward the yellowfin tuna stocks, resulting in a rate of exploitation of these stocks greater than that at which the maximum sustainable yield may be obtained. The Commission's recommendation for joint action by the parties to regulate the yellowfin tuna fishery has as its objective the restoration of these stocks to a level of abundance which will permit maximum sustainable catch and the maintenance of the stocks in that condition in the future.

(b) At each annual meeting held since 1962, the Commission affirmed its conclusions regarding the need for regulating the yellowfin tuna fishery in the eastern Pacific Ocean and at each meeting recommended to the parties to the Convention that they take joint action to:

(1) Establish a prescribed tonnage limit on the total catch of yellowfin tuna by the fishermen of all nations during each calendar year from an area of the eastern Pacific Ocean defined by the Commission;

(2) Establish open and closed seasons for yellowfin tuna under prescribed conditions;

(3) Permit the landing of an incidental catch by weight of yellowfin tuna when landed with one or more of the following fishes usually caught min-

gled with yellowfin tuna, that are taken on a fishing trip begun after the close of the yellowfin tuna fishing season: Skipjack tuna, bigeye tuna, bluefin tuna, albacore tuna, bonito, the billfishes, and the sharks; and

(4) Obtain from governments not parties to the Convention, but having vessels which operate in the fishery, cooperation in effecting the recommended conservation measures.

(c) The regulations in this part are designed to implement the Commission's recommendations for the conservation of yellowfin tuna so far as they affect vessels and persons subject to the jurisdiction of the United States.

§ 280.3 Catch limits.

The annual limitation on the quantity of yellowfin tuna permitted to be taken from the regulatory area by the fishing vessels of all nations participating in the fishery will be fixed and determined on the basis of recommendations made by the Commission pursuant to paragraph 5 of Article II of the Convention. Upon approval by the Secretary of State and the Secretary of Commerce of the recommended catch limit, announcement of the catch limit thus established shall be made by the Service Director through publication of a suitable notice in the FEDERAL REGISTER. The Service Director, in like manner, shall announce any revision or modification of an approved annual catch limit which may subsequently enter into force.

§ 280.4 Open season.

The open season for yellowfin tuna fishing shall begin annually at 0001 hours on the first day of January and terminate at 0001 hours on a date to be announced as provided in § 280.5. Time in hours shall refer to local time in the area affected.

§ 280.5 Closed season.

Pursuant to authority granted by the Commission, the Director of Investigations will determine the date on which he deemed the yellowfin fishing season should close and will promptly notify the Service Director of such date. The Service Director shall then announce the season closure date thus established by publication of a notice in the FEDERAL REGISTER. The closure date so announced shall be final except that if it shall at any time become evident to the Director of Investigations that the closure date initially determined had been affected by changed circumstances, he may substitute another date which shall be announced by the Service Director in like manner as provided for the date originally determined.

§ 280.6 Provisions for fishing inside and outside CYRA on open season trips.

(a) During the open yellowfin tuna season, every fishing vessel operating within the reguatory area shall transmit once each calendar week a message between 0900 and 2400 hours local California time. The message shall be transmitted directly to the Director of Investigations through the shore representative of the fishing vessel and shall state: The name of the reporting vessel and the tonnage by species of fish aboard. The above reporting procedure shall go into effect on a date to be announced by the Service Director through publication of a notice in the FEDERAL REGISTER.

(b) Any fishing vessel electing to fish in the Pacific Ocean, but outside the regulatory area, shall report to the Regional Director, within 48 hours before leaving port, giving the name of the reporting vessel and the port of departure; within 24 hours before leaving the regulatory area, giving the lattitude of departure, the approximate time of departure, and the tonnage by species aboard; and, within 24 hours before returning to the regulatory area, giving the latitude of reentry, the approximate time of reentry, and the tonnage by species aboard.

(1) Vessels which are at sea and elect to fish outside the CYRA in the Pacific Ocean may do so provided they report departing the CYRA 24 hours prior to departure.

(2) Vessels may fish both inside and outside the CYRA on the same voyage without restriction or well inspection.

(3) During the open yellowfish tuna season, every fishing vessel operating in the Pacific Ocean, but outside the regulatory area, shall transmit daily a

message between 1600 Coordinated Universal Time (C.U.T.) and 1800 C.U.T. The message shall be transmitted directly to Coast Guard Radio San Francisco (NMC) on frequency 16,593.3 12,435.4, or 8,291.1 KHz and shall state: "This message is being transmitted in compliance with the U.S. eastern tropical Pacific Yellowfin Tuna Regulations and confirms that the vessel (name of reporting vessel) is fishing in the Pacific Ocean, but outside the rgulatory area as of this date (give date)".

(c) Any fishing vessel which has departed port to engage in tuna fishing, prior to the date of closure of the yellowfin season, may continue to capture yellowfin tuna within the regulatory area without restriction until the fishing voyage has been completed.

(1) In addition, for 1979, only, any fishing vessel which is in port at the closure and has either (i) completed a voyage in the regulatory area during the 1979 open season or (ii) completed a voyage in the regulatory area during 1978 will be allowed one additional unrestricted fishing voyage provided that departure is made within 30 days thereafter: *Provided, however,* That if the Director of Investigations, as a result of emergency measures adopted at a special meeting of the Commission, notifies the Contracting Government to the Convention that further unrestricted fishing for yellowfin tuna shall cease, or that other measures must be taken to protect the stocks, every fishing vessel at sea, having yellowfin tuna aboard in excess of the incidental catch limitations provided in § 280.7(a), shall return directly without delay to its home port, port of departure, or such other port as may be designated by the Regional Director to unload or to receive an inspection by a designated agent of the National Marine Fisheries Service. This requirement shall take effect upon publication of notice in the FEDERAL REGISTER by the Service Director, or on a date to be specified in such notice. Any vessel failing to comply with the above requirements shall be restricted to the incidental catch limitations of § 280.7(a) for its entire fishing voyage; vessels in port on the effective date of such notice will not be allowed an additional unrestricted fishing voyage, but shall be subject to the incidental catch limitations of § 280.7(a). Other, less restrictive measures may be specified, in the manner provided above, as necessary to implement the notification from the Director of Investigations.

(2) A vessel which is determined by the Regional Director to be in the Atlantic Ocean or the Caribbean Sea or west of 150° W. longitude in the Pacific Ocean at the closure shall, for the purpose of paragraph (c)(1) of this section only, be considered to be "in port": *Provided, however,* That a vessel located west of 150° W. longitude in the Pacific Ocean shall, in order to be so considered, observe the following procedure:

(i) Prior to the closure, notify the Regional Director of the vessel's intent to engage in the one additional unrestricted fishing voyage in the regulatory area permitted by paragraph (a)(1) of this section; and

(ii) Report as required by paragraph (b) of this section (open season) or § 280.8(a)(1) (closed season), as appropriate; and

(iii) If transit of the regulatory area is required to reach the port from which the vessel will depart for such additional unrestricted fishing voyage, enter the regulatory area north of 25° N. latitude and proceed directly without delay to port.

(3) For the purpose of the above, departure refers to the date a vessel leaves port prepared to carry out fishing operations. A stopover at a single intermediate port, not exceeding 48 hours, may, however, be made to meet deficiencies in outfitting, supplying, fueling, provisioning or manning needs for a fishing voyage. Remaining in excess of 48 hours shall constitute a new fishing voyage corresponding to the delayed departure date.

(4) Any vessel which, solely by reason of seizure or other enforcement activity of a foreign government against such vessel, is unable to reach the port of its choice prior to the closure of the yellowfin fishing season shall be allowed, subject to written approval by, and under conditions set by, the Regional Director, to proceed to another port for the purpose of un-

loading and still qualify for the one additional unrestricted fishing voyage, subject to the restrictions of paragraphs (c) (1) and (2) of this section except for the in-port requirement.

(d) All reports required in this section, except messages transmitted directly to Coast Guard Radio San Francisco, shall be telephoned to area code 714, telephone number, 233-5511. Such reports, which must be delivered within the time limits specified, may be made by prepaid commercial radio message or relayed through the shore representative of the reporting vessel.

[42 FR 25864, May 20, 1977, as amended at 42 FR 32250, June 24, 1977; 43 FR 29789, July 11, 1978; 44 FR 51608, Sept. 4, 1979]

§ 280.7 Provisions for fishing inside CYRA on closed season trips.

Except as otherwise provided in § 280.6(c) and this section, after notice has been published in the FEDERAL REGISTER announcing closure of the yellowfin season, it shall be unlawful for any person or fishing vessel to land yellowfin tuna captured from within the regulatory area in any port or place until the season reopens on the following January 1.

(a) Any fishing vessel which departs port on a fishing voyage after closure of the yellowfin season, except as provided in § 280.6(c), they land yellowfin tuna captured from within the regulatory area in limited quantities as provided in paragraphs (a)(1) to (3) of this section as an incident to fishing for species with which yellowfin may be mingled. The Assistant Administrator for Fisheries may, however, through publication of a notice in the FEDERAL REGISTER adjust the incidental catch limitations to assure that the special allotments designated for vessels less than 400 short tons carrying capacity or which entered the fishery prior to January 1, 1960, are not underutilized and the 15 percent overall incidental catch for the entire tuna fleet is not exceeded. Any quantity of yellowfin tuna landed in excess of the limitations provided in paragraphs (a)(1) to (a)(3) of this section shall be subject to seizure and forfeiture pursuant to the Tuna Conventions Act of 1950, as amended (16 U.S.C. 951-961).

(1) Purse seiners of 400 short tons carrying capacity and over and which did not enter the fishery prior to January 1, 1960, may land in any port or place yellowfin tuna captured from within the regulatory area as an incident to fishing for species with which yellowfin may be mingled, but in no event shall any such vessel be permitted to land yellowfin tuna in excess of 15 percent by round weight of its total catch.

(2) Purse seiners of less than 400 short tons carrying capacity or vessels which entered the fishery prior to January 1, 1960, may land in any U.S. port yellowfin tuna captured from within the regulatory area according to the following provisions:

(i) Any vessel greater than 400 short tons carrying capacity and that entered the fishery prior to January 1, 1960, shall not be permitted to land yellowfin tuna in excess of 35 percent by round weight of its total catch.

(ii) Any vessel of 301-400 short tons carrying capacity shall not be permitted to land yellowfin tuna in excess of 50 percent by round weight of its total catch; except, that any such vessel which is on a fishing voyage longer than 70 days may land 25 percent yellowfin tuna by round weight of its established short ton carrying capacity.

(iii) Any purse seiner of 300 short tons carrying capacity or less shall not be permitted to land yellowfin in excess of 70 percent by round weight of its total catch; except, that any such vessel that is at sea longer than 50 days may land 25 percent yellowfin tuna by round weight of its established short ton carrying capacity.

(iv) Any local wet fish seiner may accumulate a 70-percent allowance by weight for the period from the date of closure of the yellowfin fishing season until the end of that month and for each calendar month thereafter provided such vessels have not landed any yellowfin tuna during the open season and make deliveries only on a daily basis.

(v) When the catch of yellowfin tuna by purse seiners fishing under the Commission's special allocation reaches 3,600 short tons, the amount of yellowfin tuna which any such vessel may lawfully land will revert to

15 percent by round weight of its total catch. After the date of closure for the special allotment is announced in the Federal Register by the Assistant Administrator for Fisheries, any vessel departing on a fishing voyage and intending to fish within the regulatory area shall be subject to the 15-percent limitation.

(3) Bait and jig boats may land in any U.S. port yellowfin tuna captured from within the regulatory area, but in no event shall any such vessel be permitted to land yellowfin tuna in excess of 60 percent by round weight of its short ton carrying capacity once established in accordance with paragraph (a)([illegible]) of this section. When the catch of yellowfin tuna by bait and jig boats collectively reaches 2,800 short tons, the amount of yellowfin tuna which any such vessel may lawfully land will revert to 15 percent by round weight of its total catch. During the period of the closed season that bait and jig boats are fishing for their allotments, all such boats must notify the Regional Director when they depart port on a fishing voyage. After a date to be announced through publication of a notice in the Federal Register by the Assistant Administrator for Fisheries, any vessel departing on a fishing voyage shall be subject to this reversion limitation of 15 percent.

(4) The short ton capacity of vessels will be determined from tables prepared by the Commission which relate carrying capacity to registered tonnages and from official unloading records available to the National Marine Fisheries Service.

(i) Managing owners of purse seine vessels of less than 400 short tons carrying capacity or which entered the fishery prior to January 1, 1960, will be notified by registered mail that their vessels are in this category and are subject to the provisions of paragraph (a)(2) of this section.

(ii) Except as provided below for bait and jig boats, managing owners not receiving notification by registered mail can assume that their vessel is of 400 short tons carrying capacity and did not enter the fishery prior to January 1, 1960, and is subject to the provisions of paragraph (a)(1) of this section.

(iii) To qualify for the bait and jig boat yellowfin allocation, managing owners of such vessels shall supply the Regional Director documentation concerning the gross and net tonnage of their vessels together with records of prior unloadings. This information will be used by the Regional Director to establish the short ton carrying capacity of each vessel. Failure to comply shall result in each such vessel being limited to 15 percent yellowfin tuna by round weight of its total catch. This 15 percent limitation shall remain in effect until the aforesaid documentation is furnished by the vessel's managing owner.

(5) The tonnage limitations specified in paragraphs (a) (2) and (3) of this section may be adjusted upward or downward. Any such adjustment will be based upon the estimated use of the incidental catch allowances, and shall be apportioned as determined by the Assistant Administrator for Fisheries. Announcement of such adjustment shall be made by publication of a notice in the Federal Register by the Assistant Administrator for Fisheries.

(b) Any fishing vessel operating within the regulatory area which began its fishing voyage during the closed season and is restricted to the catch limitations as provided in paragraph (a) of this section shall be subject to such limitation regardless of its arrival date in port. In addition, any vessel so restricted which discharges some but not all of its catch, shall be subject to the same restrictions upon completion of its next fishing voyage.

(c) All fishing vessels that are permanently based in a foreign country, which elect to participate in the allocation provisions for vessels of less than 400 short tons carrying capacity or which entered the fishery prior to January 1, 1960, shall: (1) Unload in a U.S. port after each voyage begun during the closed season, or (2) tranship all fish taken on such voyages to a U.S. port in accordance with paragraph (a)(4)(i) of this section. Any vessel failing to follow the procedures of this paragraph shall be limited to an incidental rate of yellowfin tuna not to exceed 15 percent by round weight of its total catch.

NOTE: The amount of yellowfin tuna that may be legally landed by a vessel subject to a specified percent incidental catch rate of yellowfin tuna based upon the round weight of the total catch is determined by the following formula:

Quantity of legal yellowfin tuna=(Quantity of mingled species) × (Specified incidental catch rate in percent)/(100 percent) − (Specified incidental catch rate in percent)

For example, if the incidental catch rate of yellowfin tuna is 15 percent, then:

Quantity of legal yellowfin tuna =(Quantity of mingled species) × (15)/85

(d) All reports required in this section shall be telephoned to area code 714, telephone number 233-5511. Such reports, which must be delivered within the time limits specified, may be made by prepaid commercial radio message or relayed through the shore representative of the reporting vessel.

(16 U.S.C. 951-961)

[43 FR 29789, July 11, 1978, as amended at 44 FR 51608, Sept. 4, 1979]

§ 280.8 Provisions for fishing outside CYRA on closed season trips.

(a) Any fishing vessel electing to fish exclusively in the Pacific Ocean, but outside the regulatory area, shall report to the Regional Director, within 48 hours before leaving port, giving name of the reporting vessel and the port of departure; within 24 hours before leaving the regulatory area, giving the latitude of departure and the approximate time of departure; and within 24 hours before returning to the regulatory area, giving the latitude of reentry, the approximate time of reentry, and the tonnage by species aboard. For 1977 only, the area described in the second sentence of paragraph (g), § 280.1. is considered to be outside the regulatory area.

(1) In addition, every fishing vessel operating in the Pacific Ocean, but outside the regulatory area, shall transmit daily a message between 1600 coordinated universal time (c.u.t.) and 18 c.u.t. This message shall be transmitted directly to Coast Guard Radio San Francisco (NMC) on frequency 16,593.3, 12,435.4, or 8,291.1 KHz and shall state: "This message is being transmitted in compliance with the U.S. eastern tropical Pacific yellowfin tuna regulations, and confirms that the vessel (name of reporting vessel) is fishing in the Pacific Ocean but outside the regulatory area as of this date (give date)". Any vessel failing to receive acknowledgement from Coast Guard San Francisco, must transmit the same message on the following day. Should the vessel fail to receive acknowledgement within three consecutive days, the vessel's radio equipment shall be considered inoperative and the vessel shall return directly to port without delay to unload or to receive an inspection by a designated agent of the National Marine Fisheries Service.

(b) Any fishing vessel electing to fish exclusively in the Pacific Ocean, but outside the regulatory area, shall proceed without delay to waters outside the regulatory area and upon reentering the regulatory area shall proceed directly to port without delay.

(1) If a vessel must, however, make an emergency port call, it shall proceed directly to port without delay and shall notify the Regional Director, not less than 48 hours prior to arrival, giving the name of the port to be entered. If the vessel elects to resume fishing outside the regulatory area, it must follow the procedures required in paragraph (a) of this section and shall proceed without delay directly to waters outside the regulatory area.

(c) Any fishing vessel which on the same voyage operates within and outside this paragraph shall be restricted to the incidental catch limitations as set forth in § 280.7(a) unless such vessel is made available for inspection as provided in § 280.9.

(d) All reports required in this section, except messages transmitted directly to Coast Guard Radio San Francisco, shall be telephoned to area code 714, telephone number, 233-5511. Such reports, which must be delivered within the time limits specified, may be made by prepaid commercial radio message or relayed through the shore representative of the reporting vessel.

(e) Any vessel sighted inside the regulatory area while reporting its position as outside the regulatory area shall return to port for inspection or to a U.S. port for unloading within ten days after receipt by the owner of the vessel or his agent of a certified letter from the Regional Director advising him of such sighting.

(f) Any vessel failing to file the reports and to follow the procedures of this paragraph, shall be restricted to the incidental catch limitations set forth in paragraph (b) of § 280.7, for its entire fishing voyage.

[42 FR 25864, May 20, 1977, as amended at 43 FR 29790, July 11, 1978]

§ 280.9 Reports required prior to unloading from closed season trips.

(a) All fishing vessels shall notify the Regional Director not less than 48 hours prior to any sale or delivery in a foreign country, of fish caught in the Pacific Ocean from within or outside the regulatory area. Such reports shall include the tonnage by species unloaded and whether such fish were caught in or out of the regulatory area.

(b) Any fishing vessel wishing to unload its catch in a port of the United States and in a foreign port shall notify the Regional Director 48 hours prior to the commencement of each unloading, giving the date of the unloading and the estimated tonnage by species to be unloaded at each location.

(c) All fishing vessels shall notify the Regional Director not less than 48 hours prior to transferring fish caught in the Pacific Ocean from within or outside the regulatory area to another vessel for the purpose of transshipment. Such reports shall include the date and place of unloading, name and destination of the oncarrying vessel, tonnage by species of fish transferred and whether the transferred fish were caught in or outside the regulatory area.

(d) All fishing vessels, except vessels proceeding directly to Puerto Rico or to any other U.S. port for unloading, shall notify the Regional Director not less than 48 hours prior to leaving the regulatory area via the Panama Canal. In addition, all fishing vessels, except vessels without fish aboard, shall notify the Regional Director not less than 48 hours prior to entering the regulatory area via the Panama Canal. Each report shall include the name of the reporting vessel, the tonnage by species of fish aboard and whether the fish were caught in or outside the regulatory area in Pacific waters or from Atlantic waters. Any vessel failing to file the reports and to follow the procedures of this paragraph, shall be restricted to the incidental catch limitations set forth in § 280.7(a) for its entire fishing voyage, regardless of its arrival date in port.

(e) Any person failing to follow the procedures or to make the reports required by this section may be subject to the criminal penalties provided for in the Act in addition to other restrictions which may apply.

(f) All reports required in paragraphs (a) to (d) of this section, shall be telephoned to area code 714, telephone number, 233-5511. Such reports, which must be delivered within the time limits specified, may be made by prepaid commercial radio message or relayed through the shore representative of the reporting vessel.

§ 280.10 Provisions for well inspection during closed season.

(a) Any fishing vessel having incidentally caught yellowfin tuna aboard may begin fishing on January 1 for yellowfin tuna without restriction provided such vessels are made available for inspection during the period December 27 through December 31. A request for the designation of an inspection port shall be made to the Regional Director on or before December 23. Upon notification by the Regional Director of the availability of an inspection port, each vessel shall proceed to such port for inspection by a designated agent of the National Marine Fisheries Service. Official seals will be affixed to wells containing incidentally caught yellowfin tuna and the same will be noted in the vessel's log. Fish in the wells at the time of inspection shall be subject to the incidental catch limitations as set forth in § 280.7(a), regardless of the date of unloading. In addition, the Regional Director shall be notified not less than 48 hours in advance of the date and place of any unloadings from inspected vessels. Upon arrival at point of sale or delivery, the official seals will be removed by a designated agent of the National Marine Fisheries Service. Inspected vessels shall not be allowed to leave port to resume fishing activity until 0001 hours, January 1.

(b) Any fishing vessel electing to change fishing areas, without having that portion of its catch taken outside the regulatory area restricted to such incidental catch limitations, shall request inspection services from the Regional Director. Vessels within the regulatory area shall report not less than 48 hours prior to electing to leave the area, stating their intention and requesting the designation of an inspection port, and giving the latitude of reentry, the approximate time of reentry and the tonnage by species of fish aboard. Upon notification by the Regional Director of the availability of an inspection port, each vessel shall proceed directly without delay to such port for inspection by a designated agent of the National Marine Fisheries Service. Official seals will be affixed to wells containing fish captured within or outside the regulatory area as appropriate, and the same will be noted in the vessel's log. In addition, the Regional Director shall be notified not less than 48 hours in advance of the date and place of unloadings from inspected vessels. Upon arrival at point of sale or delivery, the official seals will be removed by a designated agent of the National Marine Fisheries Service.

(1) The National Marine Fisheries Service will provide two inspections per month in foreign ports from June 1 through December 1 in the Canal Zone and Puntarenas, Costa Rica. These inspections will be provided upon advanced notification on the 1st and 2nd and the 15th and 16th day of each month, respectively, at no cost to the requestor. Inspection service may be provided in foreign ports at other times at the expense of the requesting vessel. Such additional inspections will be provided subject to advance notification, availability of personnel, immigration clearances and approval of the Regional Director. Well inspections will be provided at U.S. ports as they are needed subject to proper notification.

(c) The Regional Director, for 1979 only, may upon request authorize a National Marine Fisheries Service observer to verify the catch aboard a vessel wishing to change fishing areas. This option is available subject to the following requirements and conditions:

(1) The observer shall verify catches aboard his assigned vessel only.

(2) The vessel shall provide the observer all the information necessary to make an accurate determination of the catch aboard the vessel.

(3) There shall remain only one partially full well aboard the vessel regardless of the number of catch verifications that have been made.

(4) The reporting requirements for entering and departing the regulatory area and for the unloading of inspected vessels shall be as set forth in §§ 280.10(a) and 280.10(b).

(i) The observer shall note the amount of catch by species and the location of the catch aboard the vessel in the vessel's log. Such verification when performed according to the observer's satisfaction shall serve in lieu of a port inspection.

(ii) If the Regional Director finds that the provisions relating to catch verification are inadequate to insure compliance with the Commission's resolution, he may cancel the procedure and require vessels wishing a well inspection to return to port under the requirement of paragraph (b) of this section.

(d) Any vessel failing to file the reports and to follow the procedures of this paragraph shall be restricted to the incidental catch limitation set forth in § 280.7(a) for its entire fishing voyage.

(16 U.S.C. 951-961)

[43 FR 29790, July 11, 1978, as amended at 44 FR 51608, Sept. 4, 1979]

§§ 280.11—280.13 [Reserved]

§ 280.14 Emergency action by Service Director.

If during the closed yellowfin season, the Service Director finds that the provisions relating to the fishing outside the regulatory area are inadequate to insure that the recommendations of the Commission are met, he shall announce such findings through publication of a notice in the FEDERAL REGISTER and immediately thereafter:

(a) Every fishing vessel at sea, having yellowfin tuna aboard in excess of the incidental catch limitations as provided in § 280.7(a) which is claimed to have been captured outside the regulatory area, but in the Pacific Ocean, shall return directly without delay to its home port or port of departure to unload or to receive an inspection by a designated agent of the National Marine Fisheries Service. Any vessel failing to comply with the above requirements, shall be restricted to the incidental catch limitations set forth in § 280.7(b) for its entire fishing voyage.

(b) Any fishing vessel which has operated in the regulatory area at any time during the calendar year and which departs on any fishing voyage within the Pacific Ocean after the notice described in this section is published in the FEDERAL REGISTER, shall be restricted to the incidental catch limitations as provided in § 280.7(a).

§ 280.15 Restrictions applicable to cargo vessels.

(a) Any fishing vessel shall be deemed to have completed a fishing voyage whenever any part of its catch is transferred to a cargo vessel in conformity with the requirements of this section.

(b) In keeping with the provisions of 46 U.S.C. 251, no foreign-flag vessel, whether documented as cargo vessel or otherwise, is permitted to land in port of the United States any fish or fish products taken on board such vessel on the high seas.

(c) The transfer of fish from a fishing vessel to a cargo vessel while in a foreign country or in waters over which each country has recognized jurisdiction is subject to the applicable laws and regulations of such foreign country.

(d) During the closed yellowfin tuna season, no fishing vessel shall transfer on the high seas any part of its catch to a cargo vessel documented under the laws of the United States and no such cargo vessel shall receive, possess, or bring to any place in the United States, fish taken on board on the high seas from a fishing vessel unless a cargo vessel shall hold a permit issued in conformity with paragraph (e) of this section.

(e) Upon written application made to him, the Regional Director may issue a permit authorizing a cargo vessel documented under the laws of the United States to receive, possess, transport to the United States, fish transferred from fishing vessels on the high seas during the closed yellowfin tuna season. Such permit may authorize the possession and transportation of yellowfin tuna by a cargo vessel without regard to the quantities of fish received, but it shall contain restrictions as the Regional Director shall determine to be necessary to achieve compliance with the regulations in this part and the objectives of the yellowfin tuna conservation program.

(f) Any cargo vessel seeking permission to enter into the United States a cargo of round tuna (that is, tuna that has not been gilled, gutted, or beheaded) any part of which was received ex-vessel through a port facility in the Americas shall provide to the nearest Customs Office as a prerequisite to obtaining such permission from Customs the following information with respect to the part of such cargo received ex-vessel through a port facility in the Americas:

(1) Name, official number, and flag of each fishing vessel (including, for purposes of this paragraph, any foreign flag fishing vessel) from which was received any tuna that is aboard the cargo vessel at the time the aforesaid permission to enter is sought;

(2) Date and location of such receipt of tuna; and

(3) Certification from the master of each such fishing vessel setting forth, as to tuna received by the cargo vessel:

(i) Tonnage by species of tuna caught inside the regulatory area;

(ii) Tonnage by species of tuna caught in waters west of the regulatory area to the meridian of 150° west longitude;

(iii) Tonnage by species of tuna caught in other waters; and

(iv) As to each category, the dates of the fishing voyages on which the tuna were caught.

(g) Any cargo of round tuna for which permission to enter into the United states is sought by a cargo vessel shall be accompanied by a bill of lading indicating whether the tuna was received ex-vessel through a port facility (and, if so, from what vessels and what ports) or by other named means, such as from freezer or other storage facilities and such bill of lading shall be provided to Customs at the time permission to enter is sought.

(h) For the purpose of this section, round tuna requiring documentation shall not include albacore (*Thunnus alalunga*).

(i) Any cargo vessel failing to provide the documentation required by paragraphs (f) and (g) of this section shall be denied permission to enter into the United States undocumented lots of round tuna. If tuna is denied entry under the provisions of these regulations, the District Director of Customs shall refuse to release the tuna for entry into the United States and shall issue a notice of such refusal to the importer or consignee: *Provided, however,* That the tuna not accompanied or covered by the required documentation or certification when offered for entry may be entered into the United States if the importer or consignee gives a bond on Customs Form 7551, 7553, or 7595 for the production of the required documentation or certification. The bond shall be in the amount required under 19 CFR 113.14. Within 90 days after such Customs entry, or such additional period as the District Director of Customs may allow for good cause shown, the importer or consignee shall deliver a copy of the required documentation and certification to the District Director of Customs, and the original of the required documentation and certification to the Regional Director of the National Marine Fisheries Service. If such documentation and certification is not delivered to the District Director of Customs for the port of entry of such fish within 90 days of the date of Customs entry or such additional period as may have been allowed by the District Director of Customs for good cause shown, the importer or consignee shall redeliver or cause to be redelivered to the District Director of Customs those fish which were released in accordance with this paragraph. In the event that any such tuna is not redelivered within five days following the date specified in the preceding sentence, liquidated damages shall be assessed in the full amount of a bond given on Form 7551. When the transaction has been charged against a bond given on Form 7553 or 7595, liquidated damages shall be assessed in the amount that would have been demanded under the preceding sentence under a bond given on Form 7551. Tuna refused entry or released for entry into the United States through the use of bonding procedure provided in this paragraph may be subject to the forfeiture provisions of the Tuna Conventions Act of 1950 as is any other tuna imported into the United States in violation of the Act. Tuna which is denied entry or which is redelivered in accordance with the above and which is not exported under Customs supervision within 90 days from the date of notice or refusal of admission or date of redelivery shall be disposed of under Customs laws and regulations.

(j) Any person who knowingly enters or permits the entering of round tuna from a cargo vessel in violation of paragraph (f) or (g) of this section, or who knowingly provides false information with respect to the requirements of paragraph (f) or (g) of this section, shall, as well as the cargo of tuna, be subject to the penalties provided in the Tuna Conventions Act of 1950 (16 U.S.C. 951-961).

§ 280.16 Restrictions applicable to purchasers.

(a) Except as provided in paragraphs (b) and (d) of this section, it shall be unlawful for any person knowingly to receive, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any yellowfin tuna taken or retained by a fishing vessel in violation of the regulations in this part.

(b) In view of the perishable nature of yellowfin tuna when not processed otherwise than by chilling or freezing, and persons authorized to enforce the regulations in this part may cause to be sold, and any person may purchase, for not less than its reasonable market value such quantities of perishable yellowfin tuna as may be seized and forfeited pursuant to the Tuna Conventions Act of 1950, as amended (16 U.S.C. 951-961).

(c) The proceeds of any sale made pursuant to paragraph (b) of this section after deducting the reasonable costs of the sale, if any, shall be remitted by the purchaser to the Regional Director for deposit and retention in the Suspense Account of the National Marine Fisheries Service (Account No. 13X6875(17)) pending judgment of the court or other disposition of the case.

(d) If a duly constituted official acting under authority and in behalf of a State of the United States, of the Commonwealth of Puerto Rico, or of American Samoa seized any yellowfin tuna under the applicable laws or regulations of such government, such yellowfin tuna may be forfeited and sold or otherwise disposed of pursuant to such laws or regulations. Any yellowfin tuna so seized by an official of State, the Commonwealth of Puerto Rico or American Samoa shall not be seized by an officer or employee of the Federal Government unless it is voluntarily turned over to him to be processed against under applicable Federal laws or regulations.

§ 280.17 Recordkeeping and written reports.

(a) The master or other person in charge of a tuna vessel or such person as may be authorized in writing to serve as the agent of either of such persons shall throughout the open and closed yellowfin tuna fishing seasons:

(1) Keep an accurate log of all operations conducted from the vessel entering therein for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of fish aboard by species. The record and bridge log maintained at the request of the Commission shall be sufficient to comply with this paragraph provided the items of information specified herein are fully and accurately entered in such log.

(2) Furnish on form obtainable from the Regional Director, following the sale or delivery of a catch of fish made by such vessel, a report, certified to be correct as to facts within the knowledge of the reporting individual giving the name and official number of the fishing vessel, the dates of beginning and ending of the fishing voyage, the port of departure, and a listing separately by species of the round weight quantities (pounds or short tons) of fish sold or delivered. At the option of the vessel master or other person in charge, a copy of the fish ticket, weighout slip, settlement sheet, or similar record issued by the fish dealer or his agent may, however, be used for reporting purposes in lieu of the form obtainable from the Regional Director, if such alternate record is similarly certified and contains all items of information required by this paragraph. In addition, any vessel landing its catch in California and reporting by means of a copy of the California fish ticket, the California Fish and Game boat number may be indicated in lieu of the vessel's official number. Such sale and delivery reports shall be delivered or mailed to the Regional Director within 72 hours after weighout has been completed.

(3) The requirements of this section shall apply to the sale or delivery of a catch of tuna regardless of whether the transaction occurs in a U.S. or a foreign port.

(b) Any person authorized to carry out enforcement activities under the regulations in this part and any person authorized by the Commission shall have power, without warrant or other process to inspect, at any reasonable time, log books, catch reports statistical records, or other reports as required by the regulations in this part to be made, kept or furnished.

§ 280.18 Persons and vessels exempted.

Nothing contained in § 280.2 to § 280.18 shall apply to:

(a) Any person or vessel authorized by the Commission, the Service Director, or any State of the United States to engage in fishing for research purposes.

(b) Any person or vessel engaged in sport fishing for personal use.

§ 280.19 National Oceanic and Atmospheric Administration Employees designated as enforcement agents.

Any employee of the National Oceanic and Atmospheric Administration duly appointed and authorized to enforce Federal laws and regulations administered by the National Oceanic and Atmospheric Administration is authorized and empowered to carry out enforcement activities under the Tuna Conventions Act of 1950, as amended (16 U.S.C. 951-961).

§ 280.20 State Officers designated as enforcement agents.

Any officer or employee of a State of the United States, of the Commonwealth of Pureto Rico or of American Samoa who has been duly designated by the Service Director or his delegate with the consent of the Government concerned is authorized to function as a Federal law enforcement agent and to carry out enforcement activities under the Tuna Convention Act of 1950, as amended (16 U.S.C. 951-961).

PART 281—RESTRICTIONS ON TUNA IMPORTS

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AUTHORITY: Sec. 6, 64 Stat. 778, as amended; 16 U.S.C. 955.

SOURCE: 31 FR 16096, Dec. 15, 1966, unless otherwise noted.

§ 281.1 Definitions.

For the purposes of this part, the following terms shall be construed, respectively, to mean and to include:

(a) *United States.* All areas under the sovereignty of the United States, the Trust Territory of the Pacific Islands, and the Canal Zone.

(b) *Convention.* The Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington, May 31, 1949, by the United States of America and the Republic of Costa Rica (1 U.S.T. 230).

(c) *Commission.* The Inter-American Tropical Tuna Commission established pursuant to the Convention.

(d) *Bureau Director.* The Director of the Bureau of Commercial Fisheries, Fish and Wildlife Service, U.S. Department of the Interior.

(e) *Regulatory area.* All waters of the eastern Pacific Ocean bounded by the mainland of the Americas and the following lines: Beginning at a point on the mainland where the parallel of 40 degrees north latitude intersects the coast; thence due west to the meridian of 125 degrees west longitude; thence due south to the parallel of 20 degrees north latitude; thence due east to the meridian of 120 degrees west longitude; thence due south to the parallel of 5 degrees north latitude, thence due east to the meridian of 110 degrees west longitude; thence due south to the parallel of 10 degrees south latitude; thence due east to the meridian of 90 degrees west longitude; thence due south to the parallel of 30 degrees south latitude; thence due east to a point on the mainland where the parallel of 30 degrees south latitude intersects the coast.

(f) *Yellowfin tuna.* Any fish of the species *Thunnus albacares* (synonomy: *Neothunnus macropterus*).

(g) *Other tuna fishes.* Those species (and none other) of the family Scombridae which are known as:

(1) Albacore—*Thunnus alalunga* (synonomy: *Thunnus germo*).

(2) Bigeye—*Thunnus obesus* (synonomy: *Parathunnus sibi*).

(3) Bluefin—*Thunnus Thynnus* (synonomy: *Thunnus saliens*).

(4) Skipjack—*Euthynnus pelamis* (synonomy: *Katsuwonus pelamis*).

(h) *Fishing vessel.* Every kind, type or description of watercraft (other than purse seine skiffs) used in or outfitted for catching or processing fish or transporting fish from fishing grounds.

(i) *Person.* Individual, association, corporation or partnership.

§ 281.2 Basis and purpose.

(a) At a special meeting held at Long Beach, Calif., on September 14, 1961, the Commission recommended to the Governments of Costa Rica, Ecuador, Panama, and the United States of America, parties to the Convention, that they take joint action to limit the annual catch of yellowfin tuna from the eastern Pacific Ocean by fishermen of all nations during the calendar year 1962. This recommendation was made pursuant to paragraph 5 of Article II of the Convention on the basis of scientific investigations conducted by the Commission over a period of time dating from 1951. The most recent years of this period were marked by a substantial increase in fishing effort directed toward the yellowfin tuna stocks, resulting in a rate of exploitation of these stocks greater than that at which the maximum sustainable yield may be obtained. The Commission's recommendation for joint action by the parties to regulate the yellowfin tuna fishery has as its objective the restoration of these stocks to a level of abundance which will permit maximum sustainable catch and the maintenance of the stocks in that condition in the future.

(b) At annual meetings held at Quito, Ecuador, May 16-18, 1962; at Panama City, Panama, April 16-17, 1963; at San Diego, Calif., March 18-19, 1964; at Mexico City, Mexico, March 23-24, 1965; and at Guayaquil, Ecuador, April 19-20, 1966, the Commission affirmed its earlier conclusions regarding the need for regulating the yellowfin tuna fishery in the eastern Pacific Ocean and at each meeting recommended to the parties to the Convention that they take joint action to:

(1) Establish a prescribed tonnage limit on the total catch of yellowfin tuna by the fishermen of all nations during each calendar year from an area of the eastern Pacific Ocean defined by the Commission:

(2) Establish open and closed seasons for yellowfin tuna under prescribed conditions;

(3) Permit the landing of not more than 15 percent (15%) by weight of yellowfin tuna among the tuna taken on a fishing trip made after the close of the yellowfin tuna fishing season; and

(4) Obtain from governments not parties to the Convention, but having vessels which operate in the fishery, cooperation in affecting the recommended conservation measures.

(c) In conformity with the provisions of section 6(c) of the Act and simultaneously with the adoption of the regulations in this part, the Secretary of the Interior has made effective Part 280 of this chapter for the purpose of carrying out the recommendations of the Commission for the conservation of yellowfin tuna in the regulatory area so far as such recommendations affect all vessels and persons subject to the jurisdiction of the United States.

(d) The yellowfin tuna stocks recommended for regulation by the Commission constitute a significant part of an international high seas fishery in which the vessels of a number of countries are engaged in varying degrees. Since some of the countries are not parties to the Convention and, therefore, have no applicable treaty obligations to fulfill, the achievement of the conservation objectives with respect to the tuna resources of the eastern Pacific Ocean is dependent upon international cooperative efforts to implement the Commission's recommendations. With a view toward encouraging effective cooperation on the part of such countries, the Tuna Conventions Act of 1950, as amended, directs that restrictions be established on the importation of certain tuna fish from any country which shall fail to take action to prevent the occurrence of certain proscribed activities. Thus, section 6(c) of the Act provides that the Secretary of the Interior, with the concurrence of the Secretary of State, shall promulgate regulations—

> (1) To prohibit the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the

Commission and which were taken from the regulatory area; and

(2) To prohibit entry into the United States, from any country, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the regulatory area by vessels other than those of such country in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission.

(e) Section 6(c) of the Act further provides that "in the case of repeated and flagrant fishing operations in the regulatory area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary of the Interior, with the concurrence of the Secretary of State, may, in his discretion, also prohibit the entry from such country of such other species of tuna, in any form, as may be under investigation by the Commission and which were taken in the regulatory area."

(f) By letter of May 8, 1964, the Secretary of State concurred in the promulgation of the regulations in this part. Such regulations are designed to implement the provisions of section 6(c) of the Act with respect to import controls and to prescribe procedures for the establishment of restrictions on imports of tuna whenever such action shall be deemed warranted.

§ 281.3 Species subject to regulation.

The species of fish currently subject to regulation pursuant to a recommendation of the Commission within the meaning of section 6(c) of the Act is yellowfin tuna.

§ 281.4 Species under investigation by the Commission.

The species of fish currently under investigation by the Commission within the meaning of section 6(c) of the Act are yellowfin tuna, skipjack tuna, and bigeye tuna.

§ 281.5 Investigations authorized.

(a) The Bureau Director shall cause to be made from time to time such inquiries and investigations as may be necessary to keep himself and other persons concerned currently informed regarding the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being carried out by countries whose vessels engage in fishing within the regulatory area. In making a finding as to whether or not a country is condoning the use of vessels in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, The Bureau Director shall take into account, among such other considerations as may appear to be pertinent in a particular case, the following factors:

(1) Whether or not the country provides or causes to be provided to the Commission pertinent statistics on a timely basis.

(2) Whether or not the country has in force conservation measures applicable to its own fishermen adequate for the implementation of the Commission's recommendations.

(3) Whether or not the country has in force measures for the control of landings in its ports of species subject to regulation which are taken in the regulatory area by fishermen of other countries contrary to the Commission's conservation recommendations.

(4) Whether or not the country, having put conservation measures into effect, takes reasonable action to enforce such measures.

(5) The number of vessels of the country which conduct fishing operations in the regulatory area.

(6) The quantity of species subject to regulation taken from the regulatory area by the country's vessels contrary to the Commission's conservation recommendations and its relationship to (i) the total quantity permitted to be taken by the vessels of all countries participating in the fishery and (ii) the quantity of such species sought to be restored to the stocks of fish pursuant to the Commission's conservation recommendations.

(7) Whether or not repeated and flagrant fishing operations in the regulatory area by the vessels of the country seriously threaten the achievement of the objectives of the Commission's recommendations.

(b) Any person who shall have reason to believe that the vessels of any country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission or that other acts within the purview of the import control provisions of section 6(c) of the Tuna Conventions Act of 1950 as amended, are occurring or are likely to occur, may communicate his belief to the Bureau Director. Every such communication shall contain or be accompanied by a full statement of the reasons for the belief, including a detailed description of such specific acts or events as may support the belief, and such other pertinent facts as may indicate a need for instituting an investigation as authorized in this part.

(c) Upon receipt by the Bureau Director of any communication submitted pursuant to paragraph (b) of this section and found to comply with the requirements of that paragraph, the Bureau Director promptly shall cause such investigation to be made as appears to be warranted by the circumstances of the case. In conducting such investigation the Bureau Director or his designated representative shall consider any representations offered by foreign interests, importers, brokers, domestic producers, or other interested persons. Unless good cause to the contrary shall exist, every such investigation shall be completed within 60 days following receipt of the communication.

§ 281.6 Publication of findings.

It it shall be determined on the basis of § 281.5 that species of fish subject to regulation or under investigation by the Commission, as the case may be, are ineligible for entry into the United States from a particular country pursuant to the provisions of section 6(c) of the Act, the Bureau Director, with the approval of the Secretary of the Interior and, when required by law, with the concurrence of the Secretary of State, shall publish a finding to that effect in the FEDERAL REGISTER. Effective upon the date of publication of such finding in the FEDERAL REGISTER every shipment of fish in any form of the species under regulation or under investigation by the Commission offered for entry either directly or indirectly from the country named in the finding shall be denied entry unless it shall be established by satisfactory proof pursuant to § 281.7 that a particular shipment of such fish is not ineligible for entry: *Provided*, That entry shall not be denied and no such proof shall be required for any such shipment which, on the date of such publication, was in transit to the United States on board a vessel operating as a common carrier.

§ 281.7 Proof of admissibility.

(a) For the purposes of § 281.6 of this part and section 8(c) of the Tuna Conventions Act of 1950, as amended, a shipment of fish in any form of the species under regulation or under investigation by the Commission offered for entry, directly or indirectly, from a country named in a finding published under such § 281.6 shall be deemed to be eligible for entry if the shipment is accompanied by a certificate of eligibility certifying, as may be appropriate, that the tuna in the shipment: (1) Are not of the species specified in the published finding; (2) are of the species named in the published finding but were not taken in the regulatory area; or (3) are of the species named in the published finding but are products of an American fishery lawfully taken in conformity with applicable conservation laws and regulations and landed in the country named in the published finding solely for transshipment. The certificate shall be attached to the invoice and be in the following form:

CERTIFICATE OF ELIGIBILITY

I, ————————, an authorized officer of the Government of ————————, certify that the shipment of tuna fish accompanied by this certificate, consisting of ———— (Quantity) of ———————— (Species) in ———————————— (Number and kind of packages or containers) bearing the following marks and numbers ————————————:

☐ (a) Contains no tuna fish of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section

6(c) of the Tuna Conventions Act of 1950, as amended. [A certificate of authentication executed by a consular officer or a consular agent of the United States must be attached.]

☐ (b) Contains tuna fish of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Tuna Conventions Act of 1950, as amended, but that such fish were caught in the waters of ————————————

————————————————————

(Identify area or areas in which fish were taken) by vessels subject to the jurisdiction of ———— (Country), and that none of the said fish were taken in any part of the eastern Pacific Ocean subject to conservation regulations pursuant to recommendations of the Inter-American Tropical Tuna Commission. [A certificate of authentication executed by a consular officer or consular agent of the United States must be attached.]

☐ (c) Contains tuna fish of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Tuna Conventions Act of 1950, as amended, but that such fish, as shown in the attached declaration, were taken in strict conformity with applicable conservation laws and regulations in a fishing enterprise conducted under the American flag by vessels of the United States, are products of an American fishery within the meaning of Schedule 1, Part 15A, Tariff Schedules of the United States, were landed in a foreign country solely for transshipment without change in condition and are eligible for free entry under such Schedule and 19 CFR 10.78-10.79. [Where an entry is to be made pursuant to this paragraph, this certificate must be executed by a consular officer or consular agent of the United States and the declaration(s) required by 19 C.F.R. 10.79 must be attached.]

————————————
(Signature)

————————————
(Title)

————————————
(Address)

(b) If the tuna fish are offered for entry under paragraph (a) or (b) of the Certificate of Eligibility, the certificate must be executed by a duly authorized official of the country named in the published finding and the certificate must be authenticated with respect to the signature and official position of the person executing the same by a consular officer or consular agent of the United States. Such certificate of authentication shall be attached to the Certificate of Eligibility and be substantially in the following form:

————————
———————— ss:
————————
————————

I, ———————————— (Name of consular officer or consular agent), ———————— (Title) of the United States of America at ———————— (Place), duly commissioned and qualified, do hereby certify that ———————————— (Name of foreign official) whose true signature and official seal are, respectively, subscribed and affixed to the annexed certificate, was, on the ———————— day of————————, 19——, the date thereof, ————————————, (Title of foreign official) duly commissioned and qualified, to whose official acts faith and credit are due.

In witness whereof I have hereunto set my hand and affixed the seal of the ———————— at ———————— this ———————— day of ————————, 19—.

————————————
(Signature)

————————————————————
(Name and full title of officer)

(c) If the tuna fish are offered for entry under paragraph (c) of the Certificate of Eligibility, the certificate must be executed by a consular officer or consular agent of the United States and be accompanied by the declaration(s) required by 19 CFR 10.79. The "Declaration of Master and Two Members of Crew on Entry of Products of American Fisheries," required by 19 CFR 10.79, must contain a further statement as follows: "We further declare that the said tuna fish were caught by use in full compliance with Part 280, Title 50, Code of Federal Regulations, and such other conservation laws and regulations as were applicable at the time the fishing operation was in progress."

§ 281.8 Removal of import restrictions.

Upon a determination by the Bureau Director that the conditions no longer exist which warranted the imposition of import restrictions against the country named in the finding published pursuant to § 281.6, the Bureau Director, with the approval of the Secretary of the Interior, shall publish a finding to such effect in the Federal Register. Effective upon the date of publication of such finding, the prior existing import restrictions against the country designated therein shall terminate: *Provided*, That for a period of 1 year from such date of publication every shipment of fish in any form of the species subject to regulation or under investigation by the Commission shall continue to be denied entry unless the shipment is accompanied by a certification executed by an authorized official of the country of export and authenticated by a consular officer or consular agent of the United States, certifying that no portion of the shipment is comprised of fish which are of species under regulation and which were prohibited from entry under the prior existing import restrictions.

PART 285—ATLANTIC TUNA FISHERIES

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Authority: Atlantic Tunas Convention Act of 1975, Pub. L. 94-70, 16 U.S.C. 971-971h.

Subpart A—General

Source: 41 FR 8350, Feb. 26, 1976, unless otherwise noted.

§ 285.1 Definitions.

In addition to the meaning ascribed by the Act, if any, the following terms as used in this part shall mean:

"Act" means the Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971h.

"Albacore" means *Thunnus alalunga.*

"Angling" means fishing for, catching or taking or the attempted fishing for, catching or taking of fish by any person (angler) with a barbed hook attached to a line which is hand held or by rod and reel designed and manufactured for that purpose.

"Assistant Administrator" means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

"Atlantic bluefin tuna" means *Thunnus thynnus thynnus.* The following class size designations are made for Atlantic bluefin tuna:

(a) Young school tuna—less than 26 inches (67 cm) (14 pounds);

(b) School tuna—equal to 26 inches (67 cm) (14 pounds), but less than 57 inches (145 cm) (135 pounds);

(c) Medium tuna—equal to 57 inches (145 cm) (135 pounds), but less than 77 inches (196 cm) (310 pounds); and

(d) Giant tuna—equal to or greater than 77 inches (196 cm) (310 pounds).

"Atlantic bonito" means *Sarda chiliensis* or *Sarda sarda.*

"Authorized Officer" means:

(1) Any commissioned, warrant, or petty officer of the United States Coast Guard;

(2) Any certified enforcement officer or special agent of the NMFS;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary to enforce the provisions of the Act;

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

"Bigeye tuna" means *Thunnus obesus.*

"Buy boat" means any vessel used by a dealer in purchasing or receiving Atlantic bluefin tuna from any person or fishing vessel engaged in fishing for such tuna.

"Cargo vessel" means any fishing vessel used for transporting fish or fish products.

"Commercial activity" means any activity, other than fishing, of industry, trade, and commerce including but not limited to the buying or selling of a regulated species and activities conducted for the purpose of facilitating such buying and selling.

"Commission" means the International Commission for the Conservation of Atlantic Tunas established pursuant to Article III of the Convention.

"Convention" means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, 20 U.S.T. 2887, including any amendments or protocols thereto, which are binding upon the United States.

"Council" means the Council established within the Commission pursuant to Article V of the Convention.

"Dealer" means any person who engages in a commercial activity with respect to a regulated species or parts thereof.

"Dressed weight" means the weight of a fish after it has been gilled, gutted, beheaded, and definned.

"Fishing" means the catching, taking, or fishing for, or the attempted catching, taking, or fishing for, any species of fish covered by the Convention, or any activities in support thereof.

"Fishing trip" means the period between the time a fishing vessel departs from any port after being inspected by a designated agent of the NMFS to carry out fishing operations and the time such vessel unloads any of its catch.

"Fishing vessel" means any vessel engaged in fishing or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

"Fishing week" means a period of time beginning at 0001 hours on Sunday, and ending at 2400 hours on the following Saturday.

"Handline" or "handline gear" means fishing gear which is released by hand and consists of one main line of variable length to which is attached leaders and hooks, with the number of leaders and hooks not to exceed two. Handlines are retrieved only by hand, and not be mechanical means.

"Longline" or "Longline gear" means fishing gear which is set horizontally, either anchored, floating, or attached to a vessel, which consists of a main or groundline of gangions and hooks numbering in excess of two. A longline may be retrieved by hand or mechanical means.

"Metal tag" means the flexible, self-locking ribbon of metal issued by the NMFS for the identification of Atlantic bluefin tuna as provided in § 285.24.

"NMFS" means the National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

"Person" means any individual, partnership, corporation, or association subject to the jurisdiction of the United States.

"Plastic tag" means the plastic or combination plastic and metal marker which is issued with a tag and release permit by the NMFS pursuant to § 285.33(b).

"Purse seining" means fishing for, catching or taking a regulated species by means of an encircling net and associated gear used in commercial fishing operations.

"Quota" means the amount of fish measured either by number or weight which may be retained as prescribed in §§ 285.29 and 285.30 of Subpart B of this part and any other sections of this part.

"Regional Director" means:

(1) For purposes of Atlantic bluefin tuna—the Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; and

(2) For purposes of yellowfin tuna—the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

"Regulated species" means Atlantic bluefin, yellowfin, skipjack, albacore, or bigeye tuna.

"Regulatory area" means all waters of the Atlantic Ocean including adjacent seas, except the waters over which the individual States exercise jurisdiction unless the Assistant Administrator has determined otherwise in accordance with this part.

"Reporting week" means a period of time beginning at 0001 hours on Sunday, and ending at 2400 hours the following Saturday.

"Round weight" means the weight of a fish prior to gilling, gutting, beheading, and definning.

"Secretary" means the Secretary of Commerce or her designee.

"Short ton" means 2,000 pounds (907 kilograms).

"Skipjack tuna" means *Katsuwonus pelamis.*

"State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico and territories and possessions of the United States.

"Tuna" means Atlantic bluefin, yellowfin, skipjack, albacore or bigeye tuna.

"Yellowfin tuna" means *Thunnus albacares.*

[44 FR 36046, June 20, 1979, as amended at 45 FR 40122, June 13, 1980; 46 FR 8015, Jan. 26, 1981]

§ 285.2 Basis and purpose.

(a) At a Tuna Symposium convened in Dakar, Senegal December 12-17, 1960, the Commission for Technical Cooperation in Africa South of the Sahara suggested the need to develop international procedures for the conservation of Atlantic tunas. The idea gained support and culminated in the convening of a Conference of Plenipotentiaries on the Conservation of Atlantic Tunas in Rio de Janeiro, Brazil, during May 2-14, 1966. The Conference prepared the International Convention for the Conservation of Atlantic Tunas, which entered into force March 21, 1969, after ratification by Canada, Japan, France, Ghana, South Africa, Spain, and the United States. Ratifications have been deposited by Brazil, Cuba, Ivory Coast, Korea, Morocco, Portugal and Senegal since the Convention entered into force.

(b) The International Commission for the Conservation of Atlantic Tunas (ICCAT) has been established under the authority of the Convention. The Commission is responsible for the study of the populations of tuna and tuna-like fishes in the Atlantic Ocean and is empowered to recommend proposals for joint action by member governments aimed at maintaining these stocks at levels which will permit the maximum sustainable catch. The Commission structure also includes a Council which serves as an executive body between biennial meetings of the Commission.

(c) The First Regular Meeting of the Commission held in Rome, December 1-6, 1969, and the First Regular Meeting of the Council in Madrid, November 16-20, 1970, centered on organizational questions. Priority was given to the collection of basic data by the Secretariat from member countries on tuna fisheries and to the organization of a Standing Committee on Research and Statistics (SCRS). The Committee, composed of scientists from member countries, is responsible for coordinating and reviewing data collection and stock assessment work on tuna and tuna-like species in the Atlantic.

(d) At the second biennial meeting of the Commission held in Madrid December 2-7, 1971, the SCRS reviewed the somewhat limited data available and warned that regulatory measures might be needed in the future (1) to control the taking of Atlantic bluefin and yellowfin tuna below a certain size and (2) to reduce fishing intensity on yellowfin tuna.

(e) At the Second Regular Meeting of the ICCAT Council in Madrid November 29-December 5, 1972. The Council recommended a ban on taking and landing yellowfin tuna weighing less than 3.2 kilograms but provided for an incidental catch allowance for yellowfin tuna weighing less than 3.2 kilograms of 15 percent of all yellowfin onboard. The Council held its Third Regular Meeting in Madrid November 20-26, 1974, at which time it adopted two regulatory measures for Atlantic bluefin tuna which included a 6.4 kilogram minimum size and a limit on fishing mortality of Atlantic bluefin tuna to recent levels for a period of one year. The Council's recommendations were formally approved by a majority of the Commission members in February 1975.

(f) On August 5, 1975, the President signed into law the Atlantic Tunas Convention Act of 1975, which under certain conditions authorizes the Secretary to implement the Commission's recommendations. The Secretary's authority under the Act has been delegated to the Assistant Administrator.

[41 FR 8350, Feb. 26, 1976, as amended at 44 FR 36045, June 20, 1979]

§ 285.3 Prohibitions.

(a) It shall be unlawful—

(1) For any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing or to land any tuna in violation of these regulations; or

(2) For any person to land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which he knows, or should have known, were taken or retained contrary to these regulations, without regard to the citizenship of the person or fishing vessel which took the fish.

(b) It shall be unlawful for a dealer or master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish any catch returns, statistical records, or other reports required by these regulations to be made, kept, or furnished by such dealer, master or person.

(c) It shall be unlawful for a dealer or master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to refuse to permit any person authorized to enforce the provisions of these regulations, to enter the premises of said dealer or to board such vessel in order to inspect its catch, equipment, books, documents, records, or other articles or question the persons onboard in accordance with the provisions of these regulations, or to obstruct such officials in the execution of such duties.

(d) It shall be unlawful for any person to import from any country any fish in any form of those species subject to regulation pursuant to a recommendation of the Commission, or any fish in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in accordance with the provisions of these regulations.

§ 285.4 Civil penalties.

Any person who—

(a) Violates any provision of § 285.3 (a) of this part shall be assessed a civil penalty of not more than $25,000 and for any subsequent violation of said section shall be assessed a civil penalty of not more than $50,000;

(b) Violates any provision of § 285.3 (b) or (c) of this part shall be assessed a penalty of not more than $1,000 and for any subsequent violation of said subsection shall be assessed a civil penalty of not more than $5,000; or

(c) Violates any provision of § 285.3 (d) of this part shall be assessed a civil penalty of not more than $100,000.

§ 285.5 Enforcement.

(a) These regulations and the provisions of the Act shall be enforced jointly by the Secretary, the Secretary of the department in which the Coast Guard is operating, and the United States Customs Service.

(b) Enforcement Agents of the National Marine Fisheries Service shall enforce these regulations and the provisions of the Act on behalf of the Secretary and may take any actions authorized by the Act and these regulations with respect to enforcement. The Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal Agency for the purposes of enforcing this Act. Subject to the limitations of section 6 of the Act, the Secretary may also designate personnel of a State to enforce these regulations and the provisions of the Act.

§ 285.6 Civil procedures.

(a) The method for assessment of civil penalties for violation of these regulations or the Act shall be in accordance with the rules and procedures set forth in 50 CFR Part 218.

(b) In view of the perishable nature of tuna when not processed otherwise than by chilling or freezing, any person authorized to enforce the regulations in this part may cause to be sold, and any person may purchase, for not less than its reasonable market value such quantities of perishable tunas as may be seized and forfeited pursuant to the Act or any regulations promulgated thereunder.

(c) The proceeds of any sale made pursuant to paragraph (b) of this section after deducting the reasonable costs of the sale, if any, shall be remitted by the purchaser to the Regional Director for deposit and retention in the Suspense Account of the National Marine Fisheries Service (Account No. 14X6875(17) pending judgment of the court or other disposition of the case.

(d) If a duly constituted official acting under authority and in behalf of a State of the United States seizes any tuna taken in the regulatory area under the applicable laws or regulations of such government, such tuna may be forfeited and sold or otherwise disposed of pursuant to such laws or regulations. Any tuna so seized by an official of a State shall not be seized by an officer or employee of the Federal Government unless it is voluntarily turned over to him to be processed again under applicable Federal laws or regulations.

§ 285.7 Persons and vessels exempt.

This part does not apply to any person or vessel authorized by the Commission, the Regional Director, the Director of the Southeast Fisheries Center, or any State upon approval by the Regional Director, to engage in fishing for research purposes, except that §§ 285.23 and 285.30(c) shall apply to persons or vessels engaging in research authorized under § 285.30(c).

[44 FR 36046, June 20, 1979]

§ 285.8 Relationship to other laws and regulations.

(a) Pursuant to subsection 9(d) of the Act, with respect to any State whose waters border on the convention area:

(1) These regulations shall apply therein if the Assistant Administrator determines that any such State:

(i) Within 30 days after the promulgation of these regulations, has not enacted laws or promulgated regulations which implement the recommendations of the Commission within its waters; or

(ii) Has enacted such laws or promulgated such regulations, but such laws or regulations:

(A) Are less restrictive than the regulations promulgated pursuant to this Act to implement such recommendations of the Commission, or

(B) Are not being effectively enforced;

(b) To insure that the purposes of this section are carried out, the Assistant Administrator shall undertake a continuing review of the relevant laws and regulations of all States to which the Act and these regulations apply or may apply and the extent to which such laws and regulations are enforced.

(c) Upon notice of a determination adverse to its interests under § 285.8(a)(1), a State may request a hearing on the record.

[41 FR 8350, Feb. 26, 1976, as amended at 44 FR 36045, June 20, 1979]

§ 285.9 Extensions of regulatory area into territorial seas.

Pursuant to section 9(d) of the Atlantic Tunas Convention Act (16

U.S.C. 971) and § 285.8 of this Title 50 CFR, the Assistant Administrator has determined that the territorial sea of the United States adjacent to the States of Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Massachusetts, New Hampshire, and Puerto Rico and the Virgin Islands are included in the regulatory area for Atlantic bluefin tuna. The Assistant Administrator further finds that the following provisions of Title 50 CFR as amended, shall be effective in the territorial waters of the United States adjacent to the State of Maine: Sections 285.1 through 285.9 inclusive, and § 285.20 through § 285.33 inclusive, except for paragraph (a) of § 285.30, paragraph (a) of § 285.31 and paragraph (c)(2) of § 285.32.

[44 FR 36046, June 20, 1979]

Subpart B—Atlantic Bluefin Tuna (*Thunnus thynnus thynnus*)

AUTHORITY: Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971(h).

SOURCE: 45 FR 40123, June 13, 1980, unless otherwise noted.

§ 285.20 Effective period of regulations.

These regulations shall remain in effect until superseded, amended, or otherwise suspended.

§ 285.21 Vessel permits.

(a) *Permit Requirements.* Any vessel which fishes for, catches or takes Atlantic bluefin tuna, except vessels operated by anglers fishing for young school or school Atlantic bluefin tuna, must have an appropriate permit issued under this section. Any vessel to which a permit has been issued under this section shall travel to and from the area where it will be fishing under its own power and the operator thereof shall bring under his control with no assistance from other vessels any Atlantic bluefin tuna, except in circumstances where the safety of the vessel or crew is jeopardized or due to other circumstances beyond the control of the operator.

(b) *Categories of Permits.* Each vessel holding a permit under this section shall be registered in one, and only one, of the following categories:

(1) General
(2) Purse Seine
(3) Charter Boat
(4) Harpoon Boat
(5) Incidental Catch

(c) *Registration Procedure.* (1) Any vessel owner applying for a bluefin tuna permit under paragraph (c)(2) of this section shall indicate on the permit application the category in which the vessel is to be registered. Except for purse seine vessels, an owner may change the category in which the vessel is registered by notifying the Regional Director in writing before May 15. For 1980, any such notification of change must be received by the Regional Director before June 30.

(2) A vessel may be registered in the charter boat category only upon sufficient proof to the Regional Director at the time of application for permitted change in registration that the operator of the vessel holds a valid United States Coast Guard motorboat operator's license or ocean operator's license.

(3) Any vessel owner whose vessel uses purse seine gear to fish for Atlantic bluefin tuna in a directed fishery shall apply to the Regional Director on or before June 30, 1980, and April 15 of subsequent years for an allocation. The application shall be in writing and specify the particular size-class or classes of tuna for which the vessel will fish. The owner shall supply information relating to his yearly historical catch of each particular size class of Atlantic bluefin tuna since January 1977, including any Atlantic bluefin tuna caught during the tagging season but excluding any overquota catches. The owner shall also supply documentation of the vessel's stockholders, owners, partners, or association structure. Vessel allocations will be made in accordance with § 285.32 from the quotas specified in § 285.30 which are reserved for assessment fishing.

(i) The owner of any purse seine vessel to which a vessel allocation of Atlantic bluefin tuna is made shall allow a biological technician duly authorized by the Assistant Administrator to accompany the vessel on any or all fishing trips during which Atlantic bluefin tuna is fished, for the purpose of conducting research and observing operations.

(ii) Research and observation duties shall be carried out in such a manner as to minimize interference with commercial fishing operations. No owner, master, operator, or crew member of a purse seine vessel shall impair or in any way interfere with the research or observations being carried out.

(iii) The Secretary shall provide for the payment of all reasonable costs directly related to the quartering and maintaining of such observers on board such vessels.

(iv) In order to facilitate observer placement, the owners or operator of any purse seine vessel to which an allocation of Atlantic bluefin tuna has been made shall notify the Northeast Regional Office of the National Marine Fisheries Service at least five days in advance of any fishing trip during which school-size Atlantic bluefin tuna will be pursued.

(4) All permit applications under this section shall be submitted and signed by the vessel owner on an appropriate form which may be obtained from the Regional Director. The application shall be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The application shall state the name and address of the vessel owner, the name of the vessel, the port where the vessel is docked, the official registration or documentation number, the length of the vessel, the tonnage (if known), the area to be fished, and the category in which the vessel is to be registered.

(d) *Category of Registration.* A vessel shall fish only under the quota for the category in which it is registered, and shall use only gear appropriate to that category.

(e) *Issuance.* (1) Upon receipt of a completed application, the Regional Director shall issue a permit within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within ten days following the date of notification, the application shall be considered abandoned.

(f) *Expiration.* Permits issued under paragraph (a) of this section expire when the owner or name of the vessel changes or the vessel is retired from the Atlantic bluefin tuna fishery.

(g) *Duration.* A permit issued under this section continues in full force and effect until it expires or is revoked.

(h) *Alteration.* Any permit issued under this section which is substantially altered, erased, or mutilated is invalid.

(i) *Replacement.* Replacement permits may be issued by the Regional Director. An application for a replacement permit shall not be considered a new application.

(j) *Transfer.* Permits issued under this section are not transferable or assignable. A permit is valid only for the vessel for which it is issued.

(k) *Display.* Any permit issued under this section must be carried on board the vessel at all times. The permit shall be displayed for inspection upon request of any Authorized Officer or any employee of the NMFS designated by the Regional Director for such purpose.

(l) *Revocation.* Permits issued under this section may be modified, suspended, or revoked by the Assistant Administrator for violations of the Act, or any regulation promulgated thereunder. Any revocation, suspension, or modification shall be in accordance with the procedures set forth in 50 CFR Part 621.

(m) *Fees.* No fee is required for any permit issued under this section.

(n) *Change in application information.* Any change in the information contained in an application submitted for a permit under this section shall be reported in writing to the Regional Director within 15 days of the change.

§ 285.22 Dealer license.

(a) *General.* Any person purchasing or receiving Atlantic bluefin tuna for a commercial purpose from any person or vessel fishing for such tuna shall have a valid license under this section.

(b) *Application.* An application for a dealer license shall be made in writing, signed by the applicant and submitted to the Regional Director at least 30 days prior to the date upon which the applicant desires to have the license made effective. Applications shall provide all of the following information:

(1) The name, mailing address, and telephone number of the applicant;

(2) The expected disposition of Atlantic bluefin tuna purchased (e.g., foreign or domestic markets); and

(3) Whether the applicant will use a buy boat.

(c) *Issuance.* (1) Upon receipt of a completed application, the Regional Director shall issue a license within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application shall be considered abandoned.

(d) *Expiration.* Any license issued under this section expires on December 31 of the year for which it was issued.

(e) *Duration.* Any license issued under this section continues in full force and effect until it is suspended, revoked, or expires.

(f) *Alteration.* Any license which is substantially altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement licenses may be issued by the Regional Director. An application for a replacement license shall not be considered a new application.

(h) *Transfer.* Licenses issued under this section are not transferable or assignable. A license shall be valid only for the person to whom it is issued.

(i) *Inspection.* A license issued under this section must be kept at the principal place of business of the dealer. The license shall be displayed for inspection upon request of any Authorized Officer, or any employee of the NMFS designated by the Regional Director for that purpose.

(j) *Revocation.* Licenses issued under this section may be revoked or suspended by the Assistant Administrator for violations of the Act, or any regulations promulgated thereunder. Any revocation, suspension or modification shall be in accordance with the procedures set forth in 50 CFR Part 621.

(k) *Fees.* No fee is required for any license issued under this section.

(l) *Change in application information.* Any change in the information specified in this section shall be reported to the Regional Director within 15 days of the change.

(m) *Buy boats.* Any buy boat must have a dealer license issued under this section. No vessel to which a valid permit has been issued under § 285.21 may be issued a license under this section for buy boat operations. No buy boat shall be issued a license under this section unless the owner or operator thereof agrees in writing to allow an agent authorized by the Regional Director to accompany the vessel on any trip to observe operations. The Regional Director shall provide reasonable notice to the owner or operator of any buy boat that an agent will be placed on board the vessel. The Regional Director shall reimburse the owner of any buy boat for any expenses which the Regional Director determines to be reasonable and which are directly related to the placement of such observer on that vessel.

§ 285.23 Recordkeeping and reporting.

(a) *Dealer reports.* Any person issued a dealer license under § 285.22 shall:

(1) Maintain an accurate and complete daily report of every Atlantic bluefin tuna received or purchased on forms supplied by the NMFS and file it within two days after the end of each reporting week with the Regional Director. Each report shall specify the number of tuna purchased or received; location where the tuna was caught; the disposition of the tuna (names, addresses and, where applicable, country of destination); the source of the tuna (names and addresses); date; metal tag numbers (where applicable); round or dressed weight and fork length (by individual fish or giant tuna); and any other information requested by the Regional Director. Also, dealers using buy boats, in addition to the information required above, shall include the

precise time when the tuna are received.

(2) Report within 24 hours the purchase of each giant Atlantic bluefin tuna by completing and returning one of the reporting cards provided for this purpose by the NMFS. Each card shall show the Atlantic bluefin tuna vessel permit number, metal tag number affixed to the fish by the dealer or assigned by an Agent of the NMFS, the date landed, the port where landed, the round or dressed weight, the fork length, gear used, and area where caught. This report will be signed by the vessel permit holder or vessel operator.

(3) Submit a report, as required in paragraph (a)(1) of this section, whether or not any Atlantic bluefin tuna were received or purchased on any day during any reporting week.

(4) Permit an Authorized Officer, or any employee of the NMFS designated by the Regional Director to inspect any records of transfers, purchases, or receipts of Atlantic bluefin tuna.

(5) Retain in his or her possession a copy of each weekly report for a period of two years from the date on which it was submitted to the Regional Director.

(b) *Buy boats.* Each operator of a buy boat, in addition to the above, shall notify the Regional Director of any off-loading and request a vessel inspection at least six hours prior to such off-loading. Arrangements shall be made by calling (617) 281-3600, extension 252, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, local time, or at all other times during the day and weekends, by calling (617) 992-7711. In making the request for inspection, the owner or operator of the buy boat or his designated representative shall provide his name, the buy boat name and certificate number, the number of tuna received, and the location and anticipated time of landing at port.

(c) *Reporting week.* For the purpose of this section the reporting week begins at 12 midnight on Sunday and ends at 12 midnight the following Sunday.

§ 285.24 Metal tags.

(a) *Issuance of tags.* Any person receiving a dealer's license under the provisions of § 285.22, shall be issued numbered metal tags by the NMFS. Tag numbers shall be recorded by the NMFS under the dealer's license number to whom they are issued.

(b) *Transfer of tags.* Tags issued under paragraph (a) of this section are not transferable.

(c) *Affixing tags.* (1) Any dealer who receives or purchases a giant Atlantic bluefin tuna from a fisherman shall affix immediately to that tuna, between the fifth dorsal finlet and the keel, a tag issued under paragraph (a) of this section at the time the tuna is delivered into his possession.

(2) Any person who catches a giant Atlantic bluefin tuna and does not transfer it to a licensed dealer shall contact the nearest NMFS enforcement office within 24 hours of landing such tuna to make the tuna available for inspection before the issuance or attachment of the metal tag.

(d) *Removal of tags.* A metal tag affixed to any giant Atlantic bluefin tuna shall remain on the tuna until the tuna is either cut into portions for personal consumption or for commercial purposes or sold for export from the United States. If the tag is removed from the tuna for commercial or export purposes, the tag shall be attached to the outside of the container and the tag number must be written legibly and indelibly on the outside of any package or container which holds the tuna or parts thereof and which is being exported or transported domestically for commercial use. If a giant tuna is packed for export, the tag shall also be attached to the container until it is shipped from the United States.

§ 285.25 Prohibitions.

It shall be unlawful for any person or vessel subject to the jurisdiction of the United States to:

(a) Fish for, take or catch Atlantic bluefin tuna without a valid permit issued under § 285.21(a) and carried onboard the vessel;

(b) Fish for, take or catch Atlantic bluefin tuna after fishing has been closed or before fishing has commenced under § 285.29, except under the provisions of § 285.31, § 285.32(c)(2) or § 285.33;

(c) Fish for, take, or catch Atlantic bluefin tuna in excess of the quotas or sub-quotas specified in § 285.30 except under the provisions of § 285.31 or § 285.33;

(d) Fish for, take or catch Atlantic bluefin tuna in excess of the catch limits specified in § 285.32;

(e) Fish for, take or catch Atlantic bluefin tuna in excess of any vessel allocation made pursuant to § 285.32;

(f) Fish for, take or catch Atlantic bluefin tuna within 100 yards of the cork line of a purse seine net used by any vessel conducting scientific research operations authorized by the NMFS;

(g) Fish for, take or catch in a directed fishery Atlantic bluefin tuna with purse seine nets without an allocation made pursuant to § 285.32;

(h) Fish for, take or catch Atlantic bluefin tuna in a directed fishery with nets other than those specified in § 285.28;

(i) Land any Atlantic bluefin tuna in forms other than round, or eviscerated with the head removed;

(j) Retain any Atlantic bluefin tuna caught under a tag and release permit issued under § 285.33;

(k) Purchase, receive or transfer any Atlantic bluefin tuna at sea from a person or vessel engaged in fishing for such tuna to a person or vessel without a valid dealer license for buy boat operation issued under § 285.22;

(l) Sell, offer for sale or transfer any Atlantic bluefin tuna to any person or vessel without a valid dealer license issued under § 285.22;

(m) Engage in fishing with a vessel holding a permit under § 285.21(a) unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings under control any Atlantic bluefin tuna (secured to the catching vessel or boated) with no assistance from other vessels, except in circumstances where the safety of the vessel or crew is jeopardized or due to other circumstances beyond the control of the operator;

(n) Fail to release immediately with a minimum of injury any Atlantic bluefin tuna which will not be retained;

(o) Fail to affix immediately to any giant tuna, between the fifth dorsal finlet and the keel, an individually numbered metal tag when the tuna has been received or purchased by that person for a commercial purpose from any person or vessel who caught such tuna;

(p) Remove any metal tag affixed to a tuna pursuant to § 285.24 before removal is permitted under that section, or fail to write the tag number on the package as prescribed by that section;

(q) Begin fishing or off-loading from any purse seine vessel to which a certificate has been issued under § 285.21(a) any Atlantic bluefin tuna without first requesting an inspection of the vessel by an agent of the NMFS in accordance with § 285.28;

(r) Ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession or control any Atlantic bluefin tuna which the person knew, or should have known, was taken in violation of this subpart;

(s) Fish for, take or catch Atlantic bluefin tuna with a buy boat;

(t) Fail to report the taking of any Atlantic bluefin tuna to which a plastic tag has been affixed under a bona fide tag and release program conducted by the NMFS or authorized by the NMFS;

(u) Fail to report to the Regional Director in writing any change in the information contained in an application for any permit for a vessel within 15 days of any such change;

(v) Falsify or fail to make, keep, maintain, or submit any reports, or other record required by this subpart;

(w) Refuse to permit an Authorized Officer to make inspections for the purpose of checking any records relating to the taking, catching, harvesting, landing, purchase or sale of any Atlantic bluefin tuna required by this subpart;

(x) Make any false statement, oral or written, to an Authorized Officer concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any Atlantic bluefin tuna;

(y) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Act, this subpart, or any other regulation promulgated under the Act;

(z) Refuse to allow a biological technician duly authorized by the Assistant Administration to board and accompany a purse seine vessel on any and all trips during which school-size Atlantic bluefin tuna are fished for or taken.

(aa) Violate any other provision of this subpart, the Act, or any other regulation promulgated pursuant thereto.

(bb) Fish for, take, or catch giant Atlantic bluefin tuna with longline gear except as provided in § 285.31(d).

(cc) Fish for, take, or catch giant Atlantic bluefin tuna with longline gear, or while having longline gear on board that vessel if the vessel is registered in the general category pursuant to § 285.2(b)(1).

(dd) Purchase or transport with a buy-boat any Atlantic bluefin tuna captured incidentally by longlines.

[45 FR 40123, June 13, 1980, as amended at 46 FR 8015, Jan. 26, 1981]

§ 285.26 Presumptions.

For any Atlantic bluefin tuna which is landed eviscerated with the head removed, there shall be a rebuttable presumption for purposes of this subpart that the tuna when caught fell into a size class in accordance with the following table. For this purpose, all measurements must be taken in a straight line from the middle of the lateral surface (even if the fish has been beheaded) to the fork of the tail.

TABLE 1

Original size class (Fork length)	Approximate weights	Length with head off
Young school tuna: Less than 26 inches (67 cm).	Less than 14 pounds	Less than 18 inches (46 cm).
School tuna: Equal to 26 inches (67 cm) but less than 57 inches (145 cm).	From 14 pounds but less than 135 pounds.	18 inches (46 cm) but less than 40 inches (137 cm).
Medium tuna: Equal to 57 inches (145 cm) but less than 77 inches (196 cm).	From 135 pounds but less than 310 pounds.	40 inches (102 cm) but less than 54 inches (137 cm).
Giant tuna: 77 inches (196 cm) or more	Larger than 310 pounds	54 inches (137 cm) and over.

§ 285.27 Penalties.

(a) Any person who violates paragraphs (a) through (s) inclusive, or paragraphs (bb) through (dd), inclusive, of § 285.25 shall be assessed a civil penalty of not more than $25,000; and for a subsequent violation shall be assessed a civil penalty of not more than $50,000.

(b) Any person who violates paragraphs (t) through (z), inclusive, of § 285.25 shall be assessed a civil penalty of not more than $1,000, and for a subsequent violation shall be assessed a civil penalty of not more than $5,000.

(c) Any person who violates paragraph (aa) of § 285.25 shall be assessed a civil penalty in accordance with the criteria set forth in 16 U.S.C. 971e.

[45 FR 40123, June 13, 1980, as amended at 46 FR 8015, Jan. 26, 1981]

§ 285.28 Purse seine vessel gear restrictions and inspection.

(a) *Mesh Size.* Any owner or operator of a vessel with a certificate issued under § 285.21(b) conducting a directed fishery for Atlantic bluefin tuna with nets, other than a trap net, shall use a net with a mesh size equal to or smaller than 4.5 inches in the main body (stretched when wet) and which has at least 24 count thread throughout the net.

(b) *Exemption.* The Regional Director may exempt any person from the mesh restrictions in paragraph (a) of this section if he determines that the net sought to be excluded will not result in significant injury or mortality to Atlantic bluefin tuna which are encircled by the net but manage to escape.

(c) *Inspection.* Any owner or operator of a purse seine vessel with a certificate issued under § 285.21(a) shall request an inspection of the vessel and fishing gear by an agent of the NMFS prior to commencing any fishing trip and prior to offloading any Atlantic bluefin tuna. Requests for such inspection shall be made by calling (617) 281-3600 extension 252; or (617) 992-7711. Requests shall be made at least 24 hours prior to commencement of a fishing trip or offloading.

§ 285.29 Permitted fishing.

(a) *School and Giant Atlantic Bluefin Tuna.* (1) *Commencement.* Fishing for, catching or taking giant Atlantic bluefin by vessels using purse seine gear, to which an allocation has been made pursuant to § 285.32 in the regulatory area, may commence on August 15 of each calendar year. Fishing for, catching or taking giant Atlantic bluefin tuna by vessels using gear other than purse seines, and fishing for, catching or taking school Atlantic bluefin tuna by vessels using purse seines or gear other than purse seines in the regulatory area may commence on January 1 of each calendar year: *Provided,* That, consistent with the Convention, the act, and this part, the Assistant Administrator may change the commencement of fishing under this section for any size class of Atlantic bluefin tuna for any area and vessel gear type if he determines that such a measure will enable scientific research on the status of the stock and will not prevent the quotas for the affected fishery from being caught based upon historical catch data or other relevant information. The Assistant Administrator shall publish a notice in the FEDERAL REGISTER of any change in the commencement of fishing under this section at least 60 days prior to the commencement of the affected fishery. Nothing in this paragraph shall be construed to invalidate any more restrictive commencement date established by any State in waters under its jurisdiction.

(2) *Closure*—(i) *Purse seine vessels.* Any vessel using purse seine nets in a directed fishery for school or giant Atlantic bluefin tuna may fish for such tuna during the time permitted for such fishing, as specified in paragraph (a)(1) of this section, only until the allocation for that vessel made pursuant to § 285.32 is reached. Upon reaching its quota for a particular size class of tuna, a vessel will be deemed to have been given notice that the fishery for such Atlantic bluefin tuna is closed to that vessel.

(ii) *Vessels using gear other than purse seine nets.* The Assistant administrator shall monitor catch and landing statistics of Atlantic bluefin tuna by vessels using gear other than purse seine nets. On the basis of these statistics, he shall project a data when the total catch of giant Atlantic bluefin tuna will exhaust any quota or sub-quota under § 285.30, and shall publish a notice in the FEDERAL REGISTER stating that fishing for giant tuna by the type of vessels subject to the quota or sub-quota in the area affected must cease on that date at a specified hour.

(iii) *Charter boats.* Vessels registered in the charter boat category in the northern area may recommence fishing on the first day of any month for which a sub-quota is allocated under § 285.30(b)(2).

(iv) *Angling.* Anglers may continue to catch school tuna as specified in § 285.32(d)(2), and to fish for giant tuna under a tag and release program in accordance with § 285.33.

(b) *Young School and Medium Atlantic Bluefin Tuna.* Fishing for, catching or taking young school or medium Atlantic bluefin tuna by vessels using purse seines or gear other than purse seines in the regulatory area shall be limited at all times during the year to incidental catch in accordance with § 285.31, except that anglers may fish for, catch or take young school and medium tuna at any time in accordance with the limitations specified in § 285.32(d)(2).

§ 285.30 Quotas.

(a) *Purse seining*—(1) *School tuna.* The total amount of school Atlantic bluefin tuna which may be caught in the regulatory area by vessels using purse seine gear is 650 short tons.

(2) *Giant tuna.* The total amount of giant Atlantic bluefin tuna which may be caught in the regulatory area by vessels using purse seine gear is 300 short tons.

(3) *Assessment fishing.* The total amount of Atlantic bluefin tuna which may be caught in the regulatory area by vessels using purse seine gear in a directed fishery for such tuna under paragraph (a)(1) of this section is reserved for assessment fishing.

(b) *Fishing by other than purse seining*—(1) *Total quota.* The total amount of giant Atlantic bluefin tuna which may be caught in the regulatory area by vessels using gear other than purse seines before fishing is closed under § 285.29(a)(2) is 1,218 short tons (approximately 3,370 fish).

(2) *Northern area.* No more than 1, 128 short tons (approximately 3,100 fish) of the total quota in this paragraph may be caught in the Northern Area (the area north and east of a line drawn from a point on the southern coast of Massachusetts extending due south through Gay Head Light, Massachusetts, into the Atlantic Ocean). This quota shall be divided into subquotas as follows:

(i) General—876 short tons (±2,400 fish).

(ii) Charter boats—102 short tons (±280 fish).

(A) The sub-quota for charter boats is further subdivided into monthly quotas as follows:

(*1*) June—10 short tons, ±30 fish.

(*2*) July—27 short tons, ±75 fish.

(*3*) August—38 short tons, ±100 fish.

(*4*) September—27 short tons, ±75 fish.

(B) If the sub-quota for any month is not reached, the remainder may be carried over to the following month.

(iii) Harpoon boats—150 short tons (±400 fish).

Vessels issued a bluefin tuna permit under § 285.21(a) shall be placed in the general category, except that a vessel owner either holding a valid bluefin tuna permit or newly applying for a bluefin tuna permit under § 285.21 may register his vessel under the charter boat category in accordance with § 285.21(c)(2) or harpoon boat category in accordance with § 285.21 (c)(1).

(3) *Southern area.* No more than 90 short tons (approximately 270 fish) of the total quota for vessels fishing by other than purse seining in this paragraph may be caught in the southern area (the area west and south of the line drawn through Gay Head Light including the waters of Narragansett Bay).

(c) *Research:* In addition to the quotas set forth in paragraphs (a) and (b) of this section, a scientific quota not to exceed 225 short tons of Atlantic bluefin tuna is established for the purposes of tagging and obtaining age, sex, and other scientific research data. Any research activity shall be authorized by the Director, Southeast Fisheries Center, or his representatives, but in consultation with the Regional Director.

(d) *Incidental catches.* Atlantic bluefin tuna taken incidentally shall be included in the quotas and subquotas of this section, except Atlantic bluefin tuna taken pursuant to § 285.31(d).

[45 FR 40123, June 13, 1980, as amended at 46 FR 8015, Jan. 26, 1981]

§ 285.31 Incidental catch.

(a) *Purse seine vessels*—(1) *Giant tuna.* Purse seine vessels fishing for giant tuna in the regulatory area may take incidentally, during any fishing trip, Atlantic bluefin tuna measuring less than 7 inches fork length: *Provided* that, the amount of such tuna taken shall not exceed 3 percent, by weight, of the total amount of giant Atlantic bluefin tuna onboard the vessel at the end of the fishing trip.

(2) *School tuna.* Purse seine vessels fishing for school tuna in the regulatory area may take incidentally, during any fishing trip, Atlantic bluefin tuna outside that weight class: *Provided* that, the amount of such tuna taken shall not exceed 3 percent, by weight, of the total amount of school tuna on board the vessel at the end of the fishing trip.

(3) *Attribution.* Atlantic bluefin tuna caught incidentally by purse seine vessels fishing for an allocation of a particular size class tuna shall be applied to that vessel's allocation for such size class tuna.

(b) *Herring, mackerel, menhaden, and tuna (other than Atlantic bluefin tuna) purse seine vessel and vessels using fixed gear other than traps and longlines (pounds, weirs, and gill-*

nets). Any person operating a vessel fishing principally for species of fish other than Atlantic bluefin tuna and possessing an Atlantic bluefin tuna certificate under § 285.21 may take, during any fishing trip, Atlantic bluefin tuna of any size class; *Provided*, That the amount of Atlantic bluefin tuna taken does not exceed 2 percent, by weight, of all other fish onboard the vessel at the end of the fishing trip.

(c) *Traps*. Any person operating a vessel with a certificate issued under § 285.21(a), which takes Atlantic bluefin tuna incidentally while fishing with traps, may retain Atlantic bluefin tuna: *Provided*, That such tuna do not exceed 2 percent, by weight, of the total amount of all other fish species taken within the preceding 30-day period.

(d) *Longlines*. Any person operating a vessel using longline gear and possessing an Atlantic bluefin tuna certificate under § 285.21 shall be permitted to land giant Atlantic bluefin tuna, as an incidental catch: *Provided*, That the amount of Atlantic bluefin tuna does not exceed:

(1) Two fish per vessel, per trip, south of 36°N. latitude, and

(2) 2 percent by weight of all other fish on board at the end of the fishing trip, north of 36°N. latitude.

[45 FR 40123, June 13, 1980, as amended at 46 FR 8015, Jan. 26, 1981]

§ 285.32 Catch limits.

(a) *Purse seine vessels*. All owners of purse seine vessels registered under § 285.21(b)(2) and applying for an allocation under the provisions of § 285.21(c)(3) shall receive an allocation of the permitted size class tuna for which an application is submitted. Allocations will be made in the following manner:

(1) The Regional Director shall review all applications for allocations of Atlantic bluefin tuna by July 10, 1980, and by May 1 in subsequent years, to determine the amount of a permitted size class Atlantic bluefin tuna to be allocated to individual vessels. The Regional Director shall divide the purse seine quotas for school and giant size Atlantic bluefin tuna between historical participants (those owners actively engaged in the fishery at some time during the period January, 1977 to December, 1979) and new entrants. Eighty-six percent of the quota will be divided among historical participants and 14 percent among new entrants. No person may be a historical participant and a new entrant.

(2) Historical participants applying for a permitted size class tuna shall receive an allocation from the 86 percent of the quota based upon the number of years the owner has had a vessel in the fishery between January 1977 and December 1979 and the catch by that vessel. Relevant information relating to the catch of a vessel owned by a historical participant and the years it has been in the fishery shall be submitted to the Regional Director before any allocation may be made to that individual's vessel. The Regional Director shall review the sufficiency of such information. No Atlantic bluefin tuna caught in excess of any quota may be used in determining a vessel's allocation.

(3) Each allocation to a historical participant shall be proportional to other historical participants applying for the same size class Atlantic bluefin tuna. It shall be calculated by splitting that part of the total quota reserved for historical participants into 14 percent to be divided proportionally among historical participants based upon their years in the fishery since 1977; and 86 percent to be divided among historical participants proportionally based upon their annual catch since 1977. An individual or joint owner of a purse seine vessel receiving a historical allocation can use, in taking that vessel allocation, either the vessel that had historically participated in the fishery or a replacement vessel, regardless of the replacement vessel's size or carrying capacity; however, if a replacement vessel is used, the vessel being replaced is required to leave the Atlantic bluefin tuna fishery unless the vessel is being sold or transferred to another participant in the fishery. No one vessel may be used to catch more than one allocation.

(4) New entrants to the purse seine fishery applying for an allocation of school or giant tuna shall receive this

allocation from the 14 percent of the quota based upon the number of new entrants applying. All new entrants shall receive equal allocations. However, no new entrant will receive an allocation in excess of the least amount issued to a historical participant under the provisions of § 285.32(a)(2). In the event that no new entrants apply, the total 14 percent of the quota which would otherwise be available to new entrants shall be divided among the historical participants applying for that size class tuna according to the formula set forth in paragraph (a)(3) of this section. In the event that the Regional Director cannot allocate the total 14 percent of the quota to new entrants, any such remaining portion shall be divided equally among all participants.

(5) Vessels to which an allocation of any permitted size class of tuna is made by the Regional Director shall forfeit such allocation if, in the case of school size tuna, the vessel fails to land any such tuna by August 30; and, in the case of giant size tuna, the vessel fails to land such tuna by September 30. Any vessel allocation which is forfeited shall be divided between historical and new participants according to formula set forth in this section.

(6) Historical participants shall lose their status as such for that year if they fail to meet the performance criteria set forth in paragraph (a)(5) of this section, or if the vessel owner no longer wishes to participate in the fishery for a particular size class tuna. In the case of a non-individual vessel owner, the owner shall be deemed to be no longer participating in the Atlantic bluefin tuna fishery as a historical participant if the major stockholder or partnership or association structure changes.

(b) *Northern Area.* This paragraph applies in the northern area, as defined in § 285.30(b)(2).

(1) Vessels fishing for, catching or taking giant Atlantic bluefin tuna, which are registered in the general category under § 285.21(b)(1), may only catch one giant bluefin tuna per day per vessel. On or about August 7, the Assistant Administrator shall review dealer and buy-boat reports to determine the total catch of giant bluefin tuna. If the Assistant Administrator determines that 30 percent or more of the quota of giant bluefin tuna is caught, the allowable catch shall be continued at one giant bluefin tuna per day per vessel; if the Assistant Administrator determines that 17 or more percent and less than 30 percent of the quota has been caught, the allowable catch shall be increased to two giant bluefin tuna per day per vessel; if less than 17 percent has been caught the allowable catch shall be increased to three giant tuna per day per vessel. On or about September 7, the Assistant Administrator shall review dealer and buy-boat reports to determine the total catch of giant bluefin tuna. If the Assistant Administrator determines that 85 percent or more of the quota of giant bluefin is caught, an allowable catch of one giant bluefin tuna per day per vessel shall be continued or reestablished. If the Assistant Administrator determines that 70 or more percent and less than 85 percent of the quota has been caught, the allowable catch shall be set at two giant bluefin tuna per day per vessel. If more than 60 and less than 70 percent of the quota has been caught, the allowable catch shall be set at three giant tuna per day per vessel. If the Assistant Administrator determines that 60 percent or less of the quota has been caught, the allowable catch shall be increased to four giant tuna per day per vessel. The Assistant Administrator shall publish a notice in the FEDERAL REGISTER of any determinations and increases in allowable catch made pursuant to this paragraph.

(2) Vessels registered in the charter boat category as provided in § 285.21(b)(3) shall catch no more than one giant bluefin tuna per day per vessel.

(3) Vessels registered in the harpoon boat category as provided in § 285.21(b)(4) shall not be restricted in their daily catch rate.

(c) *Southern Area.* In the southern area, as defined in § 285.30(b)(3), vessels fishing for, catching or taking giant Atlantic bluefin tuna with gear other than purse seines may take five giant tuna per week per vessel from the commencement of fishing under

§ 285.29 until the sub-quota in § 285.30(b) for the southern area is reached.

(d) *Angling*—(1) *Giant tuna.* Vessels angling for giant Atlantic bluefin tuna in the regulatory area shall be subject to the catch limits contained in paragraphs (1)-(c) of this section, as appropriate.

(2) *Young school, school, and medium tuna.* Persons angling for young school, school, or medium Atlantic bluefin tuna in the regulatory area may take no more than four young school, school, or medium Atlantic bluefin tuna each day at any time during the year; *Provided,* That only one of the four may be a medium Atlantic bluefin tuna.

[45 FR 40123, June 13, 1980, as amended at 45 FR 48536, July, 21, 1980]

§ 285.33 Tag and release program.

(a) *Tag and Release Permits.* Any angler who wishes to fish for giant Atlantic bluefin tuna after the sub-quota under which his vessel has been issued a certificate has been reached and fishing closed under § 285.29, may fish for giant tuna only with a valid tag and release permit, and tags issued by the NMFS under paragraph (b) of this section. A tag and release permit may be obtained by sending an application, after fishing has been closed under § 285.29, to the Center Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, Florida 33149. Such application shall include the name of the vessel, official Coast Guard or State number(s), name(s) of the owner and master, vessel Atlantic bluefin tuna certificate number, and the general area(s) in which the tag and release activity will be carried out. Upon receipt of a completed application, the Center Director, within 30 days, shall issue a tag and release permit.

(b) *Plastic tags.* Anglers receiving a tag and release permit under paragraph (a) of this section shall also be issued plastic tags and detailed instructions for their use. All giant Atlantic bluefin tuna caught under a tag and release permit shall be tagged before they are released. Such tuna shall be released immediately with a minimum of injury.

Subpart C—Yellowfin Tuna (Thunnus albacares) and Bigeye Tuna (Thunnus obesus)

SOURCE: 41 FR 8352, Feb. 26, 1976, unless otherwise noted. Redesignated at 43 FR 8554, Mar. 2, 1978.

§ 285.50 Authorized fishing.

Except as provided in § 285.52, fishing in the regulatory area by persons or fishing vessels subject to the jurisdiction of the United States is authorized only for yellowfin or bigeye tuna that weigh seven pounds round weight (3.2 kg.) or more. The prohibition against fishing for bigeye tuna less than seven pounds is to remain in effect until December 31, 1983.

[46 FR 3026, Jan. 13, 1981]

§ 285.51 Open and closed seasons. [Reserved]

§ 285.52 Incidental catch.

Persons or fishing vessels subject to the jurisdiction of the United States may take yellowfin tuna or bigeye tuna or both that weigh less than seven pounds round weight incidental to authorized fishing in the regulatory area for yellowfin tuna or bigeye tuna with the following provision. Landing of incidental catch shall not exceed 3 percent by weight per trip of all yellowfin tuna and bigeye tuna weighing seven pounds or more.

[46 FR 3026, Jan. 13, 1981]

§ 285.53 Recordkeeping.

(a) Any person in charge of a fishing vessel, or any master or other person in charge of a fishing vessel subject to the jurisdiction of the United States or any person as may be authorized in writing to serve as the agent of such person or master, shall:

(1) Keep an accurate log of all operations conducted from the vessel, entering therein for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of tuna aboard by species. The record and bridge log shall be sufficient to comply with this paragraph, provided however, that the items of informa-

tion specified herein are fully and accurately entered in such log; and

(2) Furnish on a form obtainable from the Regional Director, following the sale or delivery of a catch of tuna made by such vessel, a report, certified to be correct as to facts within the knowledge of the reporting individual, giving the name and official number of the fishing vessel, the dates of beginning and ending of the fishing voyage, the port of departure, and a listing separately by species of the round weight quantities (pounds or short tons) of tuna sold or delivered. At the option of the vessel master or other person in charge, a copy of the fish ticket, weighout slip, settlement sheet, or similar record issued by the dealer or his agent may, however, be used for reporting purposes in lieu of the form obtainable from the Regional Director, if such alternate record is similarly certified and contains all items of information required by this paragraph. In addition, any vessel landing its catch in California may satisfy the requirements of this paragraph by submitting an official copy of the California fish ticket. Such sale and delivery reports shall be delivered or mailed to the Regional Director within 72 hours after weighout has been completed.

(b) Any person authorized to carry out enforcement activities under the Act or these regulations shall have power, without warrant or other process, to inspect, at any reasonable time, log books, catch reports, statistical records, or other reports as required by the regulations in this part to be made, kept or furnished.

§ 285.54 Reporting requirements.

(a) Any person in charge of a fishing vessel or any Master or other person in charge of a fishing vessel, subject to the jurisdiction of the United States, except vessels proceeding directly to Puerto Rico or to any other U.S. Port for unloading, shall report to the Regional Director not less than 48 hours prior to entering the regulatory area via the Panama Canal. In addition, any person in charge of a fishing vessel or any Master or other person in charge of a vessel, subject to the jurisdiction of the United States except a vessel without fish aboard, shall notify the Regional Director not less than 48 hours prior to leaving the regulatory area via the Panama Canal. Each report shall include the name of the reporting vessel, the tonnage by species aboard, and whether the fish were caught in Pacific or Atlantic waters.

(b) All such fishing vessels entering or leaving the regulatory area via the Panama Canal shall be subject to inspection. Official seals will be affixed to wells containing fish taken within or outside the regulatory area, as appropriate and the same will be noted on the vessel log. The official seals shall be removed only by a designated agent of the National Marine Fisheries Service, upon the arrival at point of sale or delivery.

(c) Any person in charge of a fishing vessel or any Master or other person in charge of a fishing vessel subject to the jurisdiction of the United States, shall notify the Regional Director not less than 48 hours prior to any transfer of yellowfin tuna taken in the regulatory area to another vessel for the purpose of transshipment. Such reports shall include the date and place of unloading, name and destination of the oncarrying vessel, and the tonnage by species of tuna transferred.

(d) The failure to file the reports or to follow the procedures required by this section, the tampering with or the removal of an official seal, or the alteration of a fishing vessel's log by any person or fishing vessel subject to the jurisdiction of the United States shall be a prohibited act within the meaning of § 285.3 of this part.

Subpart D—Restrictions on Tuna Imports

SOURCE: 41 FR 8352, Feb. 26, 1976, unless otherwise noted. Redesignated at 43 FR 8554, Mar. 2, 1978.

§ 285.80 Basis and purpose.

(a) The stocks of Atlantic tunas under investigation and regulation by the Commission represent the concern of a number of countries interested in the conservation of such stocks. In order to assure that the achievement of the conservation objectives of the Commission are fulfilled the Act provides for certain restrictions on the importation of Atlantic tunas. Pursuant to section 6(c) of the Act, the Secretary, with the concurrence of the Secretary of State, is directed to promulgate regulations to prohibit:

(1) The entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and

(2) The entry into the United States, from any country when vessels of such country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the regulatory area;

(3) The entry into the United States, from any country when vessels of such country engage in repeated and flagrant fishery operations in the regulatory area which seriously threaten the achievement of the objectives of the Commission's recommendations, of fish in any form of these species which are under investigation by the Commission and which were taken from the regulatory area.

(b) By letter of February 18, 1976, the Secretary of State concurred in the promulgation of the regulations in this part. Such regulations are designed to implement the provisions of section 6(c) of the Act with respect to import controls and to proscribe procedures for the establishment of restrictions on imports of tuna and tuna-like fish whenever such action shall be deemed warranted.

§ 285.81 Species subject to regulation.

The species of tuna currently subject to regulation by recommendation of the Commission within the meaning of Section 6(c) are yellowfin tuna, bigeye tuna, and Atlantic bluefin tuna.

[46 FR 3026, Jan. 13, 1981]

§ 285.82 Species under investigation by the Commission.

Those species of tuna currently under investigation by the Commission within the meaning of section 6(c) of the Act are yellowfin, Atlantic bluefin, skipjack, albacore, bigeye and Atlantic bonito, and billfishes.

§ 285.83 Investigations authorized.

(a) The Assistant Administrator shall cause to be made, from time to time, such inquiries and investigations as may be necessary to keep himself and other interested persons currently informed regarding the nature and effectiveness of the measures for the implementation of the Commission's recommendations concerning those activities which are being carried out by foreign countries whose vessels engage in fishing within the regulatory area. In making a finding, as to:

(1) Whether or not fish in any form of those species which are subject to regulation by the Commission are being taken from the regulatory area in a manner or under such circumstances as would tend to diminish effectiveness of the conservation recommendations of the Commission; or

(2) Whether or not a country is condoning the use of vessels in the conduct of fishing operations in the regulatory area in such a manner or under such circumstances that would tend to diminish the effectiveness of the conservation recommendations of the Commission; or

(3) Whether or not a country is condoning the use of vessels in repeated and flagrant fishing operations which seriously threaten the achievement of the objectives of the commissions recommendations, the Assistant Administrator shall take into account, among such other considerations as may appear to be pertinent in a particular case, the following factors:

(i) Whether or not the country provides or causes to be provided to the Commission pertinent statistics on a timely basis;

(ii) Whether or not the country has in force conservation measures applicable to its own fishermen adequate for the implementation of the Commission's recommendations;

(iii) Whether or not the country has in force measures for the control of landings in its ports of species subject to regulations which are taken in the regulatory area by fishermen of other countries contrary to the Commission's conservation recommendations;

(iv) Whether or not the country, having put conservation measures into effect, takes reasonable action to enforce such measures;

(v) The number of vessels of the country which conduct fishing operations in the regulatory area;

(vi) The quantity of species subject to regulation taken from the regulatory area by the Country's vessels contrary to the Commission's conservation recommendations and its relationship to (A) the total quantity permitted to be taken by the vessels of all countries participating in the fishery and (B) the quantity of such species sought to be restored to the stocks of fish pursuant to the Commission's conservation recommendations.

(b) Any person who shall have reason to believe that the vessels of any country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission or that other acts within the purview of the import control provisions of section 6(c) of the Act, are occurring or are likely to occur, may communicate his belief to the Assistant Administrator. Every such communication shall contain or be accompanied by a full statement of the reasons for the belief, including a detailed description of such specific acts or events as may indicate a need for instituting an investigation as authorized in this part.

(c) Upon receipt by the Assistant Administrator of any communication submitted pursuant to paragraph (b) of this section and upon a finding that the communication complies with the requirements of that paragraph, the Assistant Administrator promptly shall cause such investigation to be made as appears to be warranted by the circumstances of the case. In conducting such investigations the Assistant Administrator or his designated representative shall consider any representations offered by foreign interests, importers, brokers, domestic producers, or other interested persons. Unless good cause to the contrary shall exist, every such investigation shall be completed within 60 days following receipt of the communication.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978, and amended at 44 FR 36045, June 20, 1979]

§ 285.84 Publication of findings.

If it shall be determined on the basis of § 285.33 that species of fish subject to regulation or under investigation by the Commission, as the case may be, are ineligible for entry into the United States pursuant to the provisions of section 6 (c) of the Act, the Assistant Administrator with the approval of the Secretary of the Commerce and with the concurrence of the Secretary of State, shall publish a finding to that effect in the FEDERAL REGISTER. Effective upon the date of publication of such finding in the FEDERAL REGISTER every shipment of fish in any form of the species found to be ineligible shall be denied entry unless it shall be established by satisfactory proof pursuant to § 285.35 that a particular shipment of such fish is not ineligible for entry: *Provided,* That entry shall not be denied and no such proof shall be required for any such shipment which, on the date of such publication, was in transit to the United States on board a vessel operating as a common carrier.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978, and amended at 44 FR 36045, June 20, 1979]

§ 285.85 Proof of admissibility.

(a) For the purposes of § 285.33 of this part and section 6(c) of the Act a shipment of fish in any form of the species under regulation or under investigation by the Commission offered for entry, directly or indirectly, from a country named in a finding published under § 285.34 shall be deemed to be eligible for entry if the shipment is accompanied by a certificate of eligibility certifying as may be appropriate, that the fish in the shipment:

(1) Are not of the species specified in the published finding;

(2) Are of the species named in the published finding but were not taken in the regulatory area; or

(3) Are of the species named in the published finding but are products of an American fishery lawfully taken in conformity with applicable conservation laws and regulations and landed in the country named in the published finding solely for transshipment. The certificate shall be attached to the invoice and be in the following form:

CERTIFICATE OF ELIGIBILITY

I, ———, an authorized officer of the Government of ———, certify that the shipment of tuna accompanied by this certificate, consisting of ——— (quantity) of ——— (Species) in ———————— (Number and kind of packages or containers bearing the following marks and numbers.)

☐ (a) Contains no tuna of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Atlantic Tunas Convention Act of 1975. (A certificate of authentication executed by a consular officer or a consular agent of the United States must be attached.)

☐ (b) Contains tuna of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Atlantic Tunas Convention Act of 1975, but that such tuna were caught in the waters of———————————— (Identify area or areas in which tuna were taken) by vessels subject to the jurisdiction of ———————————— and that none of the tuna were taken in the Atlantic Ocean or its adjacent seas. (A certificate of authentication executed by a consular officer or consular agent of the United States must be attached.)

☐ (c) Contains tuna of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Atlantic Tunas Convention Act of 1975, but that such tuna, as shown in the attached declaration, were taken in strict conformity with applicable conservation laws and regulations in a fishing enterprise conducted under the American flag by vessels of the United States, are products of an American fishery within the meaning of Schedule 1, Part 15A, Tariff Schedules of the United States, were landed in a foreign country solely for transshipment without change in condition and are eligible for free entry under such Schedule and 19 CFR 10.78-10.79. (Where an entry is to be made pursuant to this paragraph, this certificate must be executed by a consular officer or consular agent of the United States and the declaration(s) required by 19 CFR 10.79 and must be attached.)

————————————
Signature

————————————
Title

————————————
Address

(b) If the tuna are offered for entry under paragraph (a) or (b) of the Certificate of Eligibility, the certificate must be executed by a duly authorized official of the country named in the published finding and the certificate must be authenticated with respect to the signature and official position of the person executing the same by a consular officer or consular agent of the United States. Such certificate of authentication shall be attached to the Certificate of Eligibility and be substantially in the following form:

————————————————————

————————————————————

————————————————————

————————————————————

————————————————————

I, ———————————— (Name of the consular officer or consular agent) ———————— (Title) of the United States of America at ———————— (Place), duly commissioned and qualified, do hereby certify that ———————— (Name of foreign official), whose true signature and official seal are, respectively subscribed and affixed to the annexed certificate, was, on the ——— day of ———, 19—, the date thereof, ———————— (Title of foreign official), duly commissioned and qualified, to whose official acts faith and credit are due.

In witness whereof I have hereunto set my hand and affixed the seal of the

———————————— this day of ————————19—.

————————————
Signature

————————————————————
(Name and full title of officer)

(c) If the tuna are offered for entry under paragraph (c) of the Certificate of Eligibility, the certificate must be executed by a consular officer or consular agent of the United States and be accompanied by the declaration(s) required by 19 CFR 10.79. The "Declaration of Master and Two Members of Crew on Entry of Products of American Fisheries", required by 19 CFR 10.79 must contain a further statement as follows: "We further declare that the said tuna were caught by us in full compliance with Part 285, Title 50, Code of Federal Regulations, and such other conservation laws and regulations as were applicable at the time the fishing operation was in progress."

§ 285.86 Removal of import restrictions.

Upon a determination by the Assistant Administrator that the conditions no longer exist which warranted the imposition of import restrictions in the finding published pursuant to § 285.34 the Assistant Administrator, with the approval of the Secretary and the concurrence of the Secretary of State, shall publish a finding to such effect in the FEDERAL REGISTER. Effective upon the date of publication of such finding, the prior existing import restrictions against the country designated therein shall terminate: *Provided*, That for a period of 1 year from such date of publication every shipment of fish in any form that was subject to the finding published pursuant to § 285.34 shall continue to be denied entry unless the shipment is accompanied by a certification executed by an authorized official of the country of export and authenticated by a consular officer or consular agent of the United States, certifying that no portion of the shipment is comprised of fish taken prior to or during the import restriction.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978, and amended at 44 FR 36045, June 20, 1979]

SUBCHAPTER I—FISHERY MARKETING COOPERATIVES

PART 290—ISSUANCE OF CEASE AND DESIST ORDERS BY THE GOVERNMENT

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AUTHORITY: Sec. 2, 48 Stat. 1213; 15 U.S.C. 522, 1939 Reorganization Plan No. II, 53 Stat. 1433.

SOURCE: 31 FR 16099, Dec. 15, 1966, unless otherwise noted.

§ 290.1 Scope of rules.

The Act of June 25, 1934 (48 Stat. 1213; 15 U.S.C. 521-522), the functions under which were transferred to the Secretary of the Interior by 1939 Reorganization Plan No. II, hereinafter in these rules referred to as the Act, in section 2 thereof provides a remedy whereby the associations of producers of aquatic products authorized by section 1 of the Act may be ordered by the Secretary of the Interior to cease and desist from monopolizing or restraining trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof. These rules implement section 2 of the Act by establishing the procedure to be followed by the Secretary of the Interior or his authorized representative, hereinafter referred to in these rules as the Secretary, in the enforcement of the section. For rules governing practice generally before the Department of the Interior see Part 1 of Title 43, Code of Federal Regulations.

§ 290.2 Institution of proceeding.

(a) *Application to institute proceeding.* Any person having any information that an association of producers of aquatic products is monopolizing or restraining trade may file with the Secretary an application requesting the institution of such proceeding as is authorized under the Act. The application shall be in writing, signed by or on behalf of the applicant, and shall include a concise statement of the facts constituting the alleged activities and the name and address of the applicant together with the name and address of the association against which the applicant complains.

(b) *Status of the applicant.* The person filing an application as described in paragraph (a) of this section shall have no legal status in the proceeding which may be instituted as a result of the application, except where the applicant may be permitted to intervene therein, in the manner hereinafter provided, or may be called as a witness, and the applicant's identity shall not be divulged except with the applicant's prior consent or upon court order.

(c) *Who may institute.* If, after investigation of the matter complained of in the application described in paragraph (a) of this section, or upon application of another Federal agency, or after investigation made on his own motion, the Secretary has reason to believe that any association organized under the provisions of the Act is engaging in monopolization or restraint of trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof, he will institute a proceeding. Proceedings will be instituted only upon complaint issued by the Secretary.

§ 290.3 Complaint.

(a) *Service.* The complaint shall be served upon the association by being sent by certified mail with return receipt requested to its principal place of business or by being left with a responsible person at the association's principal place of business.

(b) *Contents.* The complaint shall state in concise terms the allegations of fact which constitute a basis for the proceeding and shall require the association to show cause why an order should not be issued requiring it to cease and desist from the activities alleged therein to be in restraint of trade.

§ 290.4 Notice of hearing.

There shall also be served upon the association a notice of hearing, which shall be attached to the complaint or contained therein, and which shall specify a day and place not less than thirty days after service thereof to appear, introduce evidence, and make arguments to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade.

§ 290.5 Service of documents.

Copies of all pleadings, briefs, memoranda, letters, and other documents filed by or on behalf of any party or which are otherwise submitted to an official conducting any part of the proceeding for consideration in connection therewith, shall be served upon all parties or their representatives in person or by certified mail.

§ 290.6 Hearing official.

The hearing for the purpose of taking evidence and hearing arguments to determine whether an order should be issued requiring the association to cease and desist from monopolization or restraint of trade shall be conducted by a hearing official designated by the Secretary. No person shall be assigned as hearing official who (a) has any pecuniary interest in the matter or business involved in the proceeding, or (b) has participated in the investigation preceding the institution of the proceeding, in the preparation of the complaint, or in the development of the evidence to be introduced in the proceeding.

§ 290.7 Intervention.

Upon written application, interested parties shall be permitted to intervene in the proceedings when the hearing official or the Secretary shall determine that the interests of justice will be served thereby.

§ 290.8 Hearing.

(a) *Departmental counsel.* The case against the association shall be presented by a Departmental counsel appointed for that purpose. The Bureau of Commercial Fisheries shall be responsible for the case against the association and the Bureau shall be considered a party within the purview of these rules.

(b) *Conduct of hearing.* Insofar as feasible, hearings shall be informal. Parties may offer oral and written evidence, subject to the exclusion by the hearing official, in his discretion, of irrelevant, immaterial, repetitious, or hearsay evidence.

(c) *Briefs.* Briefs may be submitted on behalf of interested parties at any time prior to the 30 days after the termination of the hearing.

(d) *Examination of witnesses.* Attention of witnesses shall be invited to 18 U.S.C. 1001. Testimony may be received under oath or affirmation. All witnesses may be examined or cross-examined by the hearing official and by representatives of any party.

(e) *Transcript.* The hearing official shall make provision for a complete transcript of the hearing. A copy of the transcript shall be available to interested parties upon payment of a fee prescribed by the Chief Clerk of the Department of the Interior pursuant to Part 2 of Title 43, Code of Federal Regulations, or pursuant to any applicable Departmental contract covering reporting services.

§ 290.9 Preliminary decision by hearing official.

(a) *Issuance of preliminary decision.* Following the hearing and upon completion of the time allowed for filing briefs, the hearing official shall issue a decision embodying his findings of fact and conclusions of law on all issues as to whether the association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced thereby. The decision of the hearing official shall be made a part of the record and a copy thereof shall be served upon all parties to the proceeding.

(b) *Filing of exceptions.* Within 30 days after service of the decision of the hearing official any party to the proceeding may file with the hearing official exceptions to his decision. This document of exceptions shall set forth separately and specifically each error asserted.

(c) *Transmittal of record.* The hearing official, immediately following the period allowed for the filing of exceptions, shall transmit to the Secretary the entire record of the proceeding.

§ 290.10 Argument before the Secretary.

(a) *Oral argument.* Unless a party has included in the exceptions a request for oral argument before the Secretary or has filed a separate request for oral argument prior to the expiration of the last date for filing such exceptions, the right to such oral argument shall be deemed to have been waived.

(b) *Briefs.* The parties may file written briefs either in addition to oral argument or in lieu thereof.

(c) *Scope of argument.* Except where the Secretary determines that argument on additional issues would be helpful, argument, whether oral or on brief, shall be limited to the issues raised by the exceptions. If the Secretary determines that additional issues should be argued, the parties or their representatives shall be given reasonable notice of such determination, so as to permit preparation of adequate argument on all the issues argued.

§ 290.11 Preparation and issuance of final decision and order.

As soon as practicable after the receipt of the record from the hearing official, or in case further proceedings were had before the Secretary, as soon as practicable thereafter, the Secretary, upon the basis of and after due consideration of the record as a whole, including that of any proceedings before him, shall prepare a final decision and an order based upon the decision. If the Secretary has found that the association is engaged in monopolization or restraint of trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced thereby, the order shall recite the facts found by him and direct such association to cease and desist from monopolization or restraint of trade. The Secretary shall cause this order to be served upon the association. On the request of the association, or if it fails and neglects for 30 days to obey such order, the Secretary shall, in accordance with the Act, file in the district court in the judicial district in which the association has its principal place of business a certified copy of the order and of all the records in the proceeding together with a petition asking that the order be enforced and shall given notice to the Attorney General and to the association of such filing.

SUBCHAPTER J—CONTINENTAL SHELF

PART 296—FISHERMEN'S CONTINGENCY FUND

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APPENDIX I

AUTHORITY: Pub. L. 95-372; 92 Stat. 629 (43 U.S.C. 1841 *et seq.*).

SOURCE: 45 FR 6069, Jan. 24, 1980, unless otherwise noted.

§ 296.1 Purpose.

These regulations implement Title IV of the Outer Continental Shelf Lands Act Amendments of 1978 ("Title IV"). Title IV establishes a Fishermen's Contingency Fund to compensate commercial fishermen for eligible claims for actual and consequential damages, including loss of profits, due to damage to, or loss of, fishing gear by materials, equipment, tools, containers, or other items associated with oil and gas exploration, development, or production activities on the Outer Continental Shelf.

§ 296.2 Definitions.

Unless the context otherwise requires, the terms used in this part have the following meanings:

"ALJ" means an administrative law judge or hearing examiner appointed under 5 U.S.C. 3105.

"Area account" means an account, within the Fishermen's Contingency Fund, for a specific area of the Outer Continental Shelf, as described in § 296.3.

"Area affected by OCS oil and gas exploration, development, or production activities" means any geographic area which is:

(1) Under oil or gas lease on the OCS;

(2) Within one-half geographical mile of an oil or gas lease, pipeline, easement, or right-of-way which is on the OCS; or

(3) Otherwise associated with OCS oil and gas activities (such as expired lease areas, relinquished rights-of-way and easements, and areas used extensively by surface vessels supporting OCS oil and gas activities).

Determinations about areas which are "otherwise associated with OCS oil and gas activities" under paragraph (3) of this definition will be made on a case-by-case basis by the Chief, FSD, based upon information supplied by the Secretary of the Interior; such determinations are subject to review by the ALJ when the ALJ adjudicates the claim.

Areas landward of the Outer Continental Shelf are included under this definition when such areas meet the criteria of this definition.

"Chief, Financial Services Division, NMFS" or "Chief, FSD" means the Chief of the Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, 3300 Whitehaven St., N.W., Washington, D.C., 20235.

"Citizen of the United States" means (1) any person who is a United States citizen by law, birth, or naturalization; (2) any State, any agency of a State, or a group of States; (3) any partnership or association organized under the laws of any State; or (4) any corporation organized under the laws of any State which has as its president or other chief executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth, or naturalization, and which has at least seventy-five percent (75%) of the interest in the corporation owned by citizens of the United States. Seventy-five percent (75%) of the interest in the corporation shall not be deemed to be owned by citizens of the United States if:

(a) The title of seventy-five percent (75%) of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States;

(b) Seventy-five percent (75%) of the voting power in such corporation is not vested in citizens of the United States;

(c) Through any contract or understanding it is so arranged that more than twenty-five percent (25%) of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or

(d) By any other means whatsoever, control of any interest in the corporation in excess of twenty-five percent (25%) is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

"Claimant" means a commercial fisherman who files a claim under this part.

"Commercial fisherman" means any citizen of the United States who owns, operates, or derives income from being employed on a commercial fishing vessel.

"Commercial fishing vessel" means any vessel, boat, ship, or other craft which is (1) documented under the laws of the United States or, if under five net tons, registered under the laws of any State, and (2) used for, equipped to be used for, or of a type which is normally used for commercial purposes for the catching, taking, or harvesting of fish or the aiding or assisting at sea of any activity related to the catching, taking, or harvesting of fish, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

"Consequential damage" means, generally, damage, loss, or expense, that reasonably could be expected to occur as a result of physical contact between fishing gear and an obstruction or other object. Some types of consequential damage are described in § 296.6(c) of this part; and

"Easement" means a right of use of easement granted under 30 CFR 250.18.

"Exploration permit" means the "permit" defined in 30 CFR Part 251.

"Financially responsible party" means a financially solvent person who is responsible for damage to or loss of a commercial fishing vessel or fishing gear by materials, equipment, tools, containers or other items associated with OCS oil and gas exploration, development, or production activities.

"Fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

"Fishing gear" means (1) any commercial fishing vessel, and (2) any equipment of such vessel, whether or not such equipment is attached to the vessel.

"Fund" means the Fishermen's Contingency Fund established under 43 U.S.C. 1842.

"General Counsel" means the General Counsel, National Oceanic and Atmospheric Administration, or a designee.

"Holder" means the record owner of each lease, exploration permit, easement, or right-of-way or any agent or assignee of such record owner.

"Interested person" means any person with an interest in the claim, including but not limited to a person (including a lessee or permittee or such person's contractor or subcontractor) known to have engaged in activities associated with OCS oil and gas exploration, development or production in the vicinity where the claimant's damage or loss occurred.

"Lease" means any form of authorization issued under section 8 or maintained under section 6 of the Outer Continental Shelf Lands Act and which authorizes exploration for, and development and production of, oil and gas resources.

"Natural obstruction" means any object or thing not made or caused by humans which hinders or prevents the operation of fishing gear.

"NMFS" means the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

"National Ocean Survey" means the National Ocean Survey, National Oceanic and Atmospheric Administration, Department of Commerce.

"Outer Continental Shelf" or "OCS" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in 43 U.S.C. 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Outer Continental Shelf Lands Act" means 43 U.S.C. 1331 *et seq.*, as amended.

"Person" means an individual, partnership, corporation, association, public or private organization, government, or other entity.

"Right-of-way" means a right-of-way granted under section 5(e) of the Outer Continental Shelf Lands Act (43 U.S.C. 1334(e)) or under 43 CFR 3340.0-5.

"Secretary of the Interior" means the Secretary of the Department of the Interior or a designee.

"Title IV" means Title IV of the Outer Continental Shelf Lands Act Amendments of 1978, 92 Stat. 629, Pub. L. 95-372, 43 U.S.C. 1841 *et seq.*

"USGS" means the United States Geological Survey, Department of the Interior.

[45 FR 6069, Jan. 24, 1980, as amended at 45 FR 44946, July 2, 1980]

§ 296.3 Fishermen's Contingency Fund.

(a) *General.* There is established in the Treasury of the United States a Fishermen's Contingency Fund consisting of the area accounts designated in paragraph (b) of this section.

(b) *Area accounts.* The following area accounts are established within the Fund:

(1) *North Atlantic Area Account.* This account is for the area of the OCS in the Atlantic Ocean which is bounded by the U.S.-Canadian boundary on the north, 39° N. latitude on the south, and 71° W. longitude on the west.

(2) *Mid-South Atlantic Area Account.* This account is for those areas of the OCS in the Atlantic Ocean which are:

(i) Both north of 39° N. latitude and west of 71° W. longitude;

(ii) South of 39° N. latitude and east of 80°15′ W. longitude (off the southern coast of Florida); or

(iii) Adjacent to any U.S. territory, commonwealth, or possession in the Atlantic Ocean or the Caribbean Sea to which the Outer Continental Shelf Lands Act applies.

(3) *Pacific Area Account.* This account is for the area of the OCS adjacent to Washington, Oregon, California, Hawaii, or any U.S. territory, commonwealth, or possession in the Pacific Ocean to which the Outer Continental Shelf Lands Act applies.

(4) *Alaska Area Account.* This account is for the area of the OCS adjacent to Alaska.

(5) *Freeport Area Account.* This account is for the area of the OCS in the Gulf of Mexico as described in section A of Appendix I of this part. This area is identical to the USGS Freeport District.

(6) *Lake Charles Area Account.* This account is for the area of the OCS in the Gulf of Mexico as described in section B of Appendix I of this part. This area is identical to the USGS Lake Charles District.

(7) *Lafayette Area Account.* This account is for the area of the OCS in the Gulf of Mexico as described in section C of Appendix I of this part. This area is identical to the USGS Lafayette District.

(8) *Houma Area Account.* This account is for the area of the OCS in the Gulf of Mexico as described in section D of Appendix I of this part. This area is identical to the USGS Houma District.

(9) *Metairie Area Account.* This account is for the area of the OCS in the Gulf of Mexico as described in section E of Appendix I of this part. This area is identical to the USGS Metairie District.

(c) *Exclusion.* The geographic area for each area account described in paragraph (b) of this section does not include submerged lands recognized by the United States as being under the jurisdiction of any State under the Submerged Lands Act (43 U.S.C. 1301 *et seq.*).

(d) *Amounts.* Each area account shall be funded initially at $100,000. Amounts in any area account may not exceed $100,000.

§ 296.4 Payments into the Fund.

(a) *Initial assessments.* Each lease issued or maintained under the Outer Continental Shelf Lands Act for any tract in any geographical area for which there is an area account, each easement or right-of-way for the construction of a pipeline in such area, and each exploration permit in such area, in effect at any time on or after January 24, 1980 shall be assessed in accordance with paragraph (c) of this section so that $100,000 will be collected in each area account.

(b) *Assessments to maintain accounts*—(1) *When depleted.* If the total amount in any area account is less than $50,000, the Chief, FSD, may determine that the account is depleted. After making the determination, the Chief, FSD, will notify the Secretary of the Interior that an assessment is needed to maintain the area account.

(2) *Amounts.* Each lease, permit, easement, and right-of-way which is both (i) in the geographical area for which there is a depleted area account (as determined under paragraph (b)(1) of this section) and (ii) in effect on the date an assessment is effective, shall be assessed such amount as is necessary to increase the total amount in the area account to $100,000.

(c) *Calculation of amount*—(1) *Criteria.* The amount to be paid under paragraphs (a) and (b) of this section by each holder of a lease, exploration permit, easement, and right-of-way in any geographical area for which there is an area account shall be determined as follows:

(i) Each exploration permit in effect on the date an assessment is effective is assessed $50.00.

(ii) Leases, easements, and rights-of-way are assessed equally on a per-unit basis based on the number of leases and pipeline segments in effect on the date an assessment is effective.

(iii) New permits, leases, rights-of-way, and easements, that come into existence after an assessment is made, escape assessment until the next assessment, at which time all permits, leases, rights-of-way, and easements in effect are assessed.

(iv) Pipeline rights-of-way and easements in the Gulf of Mexico are credited to the area account in which the pipeline segment originates.

(v) Pipeline easements to be assessed do not include flow or gathering lines within the confines of a single lease or group of contiguous leases under unitized operation or a single operator.

(2) *By whom calculated.* The Secretary of the Interior will calculate the amounts to be paid by each holder.

(d) *Billing.* (1) The Chief, FSD, will inform the Secretary of the Interior each time there is to be an assessment under this section.

(2) The Secretary of the Interior will notify each appropriate holder of the assessments and in what amount and where payable. Such notification shall include an itemized statement of the assessment.

(e) *To whom, by whom and when payable.* Each assessment under this section shall be paid to the Secretary of the Interior by the holder no later than 30 days after the Secretary of the Interior sends notice of the assessment under paragraph (d)(2) of this section.

(f) *Maximum payment.* No lease, exploration permit, easement, or right-of-way shall be assessed more than a total of $5,000 in any calendar year under this section.

§ 296.5 Claims eligible for compensation.

(a) *Claimants.* To be eligible for compensation under this part, the damage or loss must be suffered by a commerical fisherman.

(b) *Damage or loss of fishing gear.* Except as provided in paragraph (c) of this section, any actual or consequential damage (including loss of profits) due to damage to or loss of fishing gear caused by materials, equipment, tools, containers, or other items associated with oil and gas exploration, development, or production activities in a geographical area for which an area account has been established under § 296.3 is eligible for compensation under this part. Damage or loss may be eligible for compensation even if it did not occur in the waters above the OCS, if the item causing the damage or loss was associated with OCS oil and gas exploration, development, or production activities.

(c) *Exceptions.* As specified by the Title IV statute, damage or loss is not eligible for compensation under this part:

(1) If the damage or loss with respect to which the claim is filed was caused by materials, equipment, tools, containers, or other items attributable to a financially responsible party;

(2) To the extent that damages were caused by the negligence or fault of the commercial fisherman making the claim (see also § 296.6(e));

(3) If the event causing the damage or loss with respect to which the claim is filed occurred before September 18, 1978;

(4) In the case of a claim for damage to, or loss of, fishing gear, in an amount in excess of the replacement value of the fishing gear with respect to which the claim is filed;

(5) In the case of a claim for loss of profits (i) for any period in excess of 6 months, and (ii) unless such claim is supported by records with respect to the claimant's profits during the previous 12-month period (see also §§ 296.6(c)(2) and 296.7(e)(11));

(6) For any portion of the damages claimed with respect to which the claimant has or will receive compensation from insurance (see also § 296.6(f));

(7) If the claim is not filed within 60 days after the date the claimant discovers the damage or loss with respect to which the claim is filed (see also §§ 296.7(c) and 296.8(b)); and

(8) If the damage or loss was caused by a natural obstruction or an obstruction unrelated to OCS oil and gas exploration, development, or production activities.

§ 296.6 Amount of awards.

(a) *General.* The amount of the award under this part is the total of the amounts under paragraphs (b), (c) and (d) of this section, minus any reductions under paragraphs (e) and (f) of this section and minus any reduction under § 296.11 (if applicable).

(b) *Fishing gear.* If the fishing gear with respect to which the claim is filed can be repaired to a condition substantially similar to its condition immediately before the damage was suffered, at a cost less than its replacement cost minus its salvage value, then the amount of compensation is its repair cost. If the fishing gear is not lost but cannot be repaired to a condition substantially similar to its condition immediately before the damage was suffered, at a cost less than its replacement cost minus its salvage value, then the amount of compensation is the damaged gear's replacement cost minus its salvage value. If the fishing gear is lost, the amount of compensation is the lost gear's replacement cost. For the purposes of this § 296.6, the term "replacement cost" means the cost of supplying new fishing gear of the same or substantially similar size, type, grade and material of construction, without reference to the age or condition of the gear damaged or lost;

(c) *Consequential damage*—(1) *Expenses.* The amount of an award under this part will include compensation for any reasonable expenses actually incurred by the claimant to ascertain the cause and extent of the damage or loss caused to fishing gear and to obtain a decision in the claimant's favor. The ALJ will determine what expenses are reasonable and their amounts.

(2) *Loss of profits.* (i) The amount of an award under this part will include compensation for any loss of profits due to damage to, or loss of, fishing gear with respect to which the claim is filed.

(ii) A claim for loss of profits due to loss of time spent in disengaging fishing gear from any item described in § 296.5(b) may be eligible for compensation under this part even if the fishing gear involved was not damaged or lost. Compensation for this type of lost profits ordinarily will not exceed what would have been the replacement cost, less salvage value, of the fishing gear disengaged, unless the claimant can show that his efforts to disengage the gear were of reasonable duration and that abandonment of the gear would have resulted in a greater economic loss.

(iii) No award may be made under this part for loss of profits for any period in excess of 6 months from the date when the damage or loss of the fishing gear was discovered.

(iv) A claim for loss of profits must be supported by records with respect to the claimant's profits during the 12-month period immediately preceding the date of the discovery of the damage to or loss of the fishing gear (if the claimant was not a commercial fisherman for all of the 12-month period or if the fishery involved is a new one, estimates of profit may be based on NMFS statistics or other reliable evidence);

(v) In determining the amount awarded under this paragraph (c)(2), the ALJ may consider any evidence concerning:

(A) Profits from the corresponding quarter of the previous year;

(B) Profits from trips immediately before and after the loss or damage which is the subject of the claim;

(C) Such other evidence as the claimant may submit; and

(D) Such other evidence as the hearing examiner may deem appropriate.

(vi) The measure of compensation for loss of profit ordinarily is the net profit lost. If the ALJ determines that a different measure of compensation for loss of profit is appropriate because the facts of the claim are sufficiently extraordinary, and states the reasons for the determination, the ALJ may apply the measure of compensation which the ALJ deems to be most appropriate.

(vii) In making either an agency recommendation or a proposed settlement under § 296.8(c), the Chief, FSD, will use an administrative standard to determine lost profit. Awards computed under the administrative standard may include an amount for income lost by crew members. The owner or operator of the commercial fishing vessel involved in the claim will be responsible for distributing the appropriate portion of the award to each crew member. The administrative standard will be based on the most recent filed Federal income tax return, and on supplemental documentation of income and expenses of the vessel involved in the loss or damage (or, in the discretion of the Chief, FSD, a different vessel). Information concerning the application of the administrative standard for determining lost profits may be obtained from the Chief, FSD (see § 296.7(a)(3) of this part for the Chief, FSD's address). The Chief, FSD, will not attempt to settle a claim for lost profits if such a Federal income tax return, and supplemental documentation of income and expenses, are not made available; in such cases, the compensation for lost profits will be determined by the ALJ. If the claimant does not accept the Chief, FSD's computation of the amount of lost profits, the amount of lost profits will be determined by the ALJ. Awards computed by the ALJ may include separate sub-awards to crew members. (See also § 296.7(e)(11)).

(3) *Fuel.* An award under this part will include compensation for fuel consumed as a result of the damage or loss of fishing gear compensable under this part (for example, if a fishing vessel must return to port in order to repair or replace a net damaged or lost due to an obstruction).

(4) *Other.* An award under this part may include compensation for any other consequential damage resulting from the damage or loss of fishing gear, but may not include compensation for personal injury resulting from damaged fishing gear.

(d) *Attorneys' fees.* An award under this part will include compensation for reasonable attorneys' fees incurred by the claimant in obtaining a decision in the claimant's favor. Claimants will not be compensated for attorneys' fees if the claim is denied.

(e) *Negligence of claimant.* (1) The amount of an award under this part is reduced to the extent that the ALJ finds that the loss or damage (including consequential damages) was caused by the negligence or fault of the claimant. (For example, a claimant who sustained $10,000 in damages and whose negligence or fault was found to be responsible for 40% of the damage would receive $6,000 in compensation. If the same claimant were responsible for 99% of the negligence or fault that caused the damage, the claimant would receive $100 in compensation).

(2) Negligence or fault of the claimant includes, but is not limited to, failure to:

(i) Remain outside of any navigation safety zone established around oil and gas rigs and platforms by any responsible Federal agency;

(ii) Avoid obstructions recorded on nautical charts or in the Notice to Mariners, or marked by a buoy or other surface marker (casualties occurring within a one-quarter mile radius of obstructions so recorded or marked are presumed to involve negligence or fault of the claimant);

(iii) Abide by established rules of the road;

(iv) Use proper care; or

(v) Attempt to mitigate, or to use due care and diligence mitigating the damage to, or loss of, the fishing gear and any resulting economic loss.

(3) With respect to the actions described in paragraph (e)(2) of this section, negligence of the owner or operator of the commercial fishing vessel involved in a claim shall bar or reduce an award to the vessel's crew members with a claim arising from the same damage or loss to the same extent that it bars or reduces an award to such owner or operator.

(f) *Insurance proceeds.* (1) The amount of any award under this part will be reduced by the amount of any compensation the claimant received, or will receive, from insurance for the damage or loss with respect to which the claim against the Fund is filed.

(2) If the claimant has insurance which covers the damage, or any portion of it, the claimant must seek compensation from the insurance. No award will be made from the Fund for damage which is covered by the claimant's insurance.

[45 FR 6069, Jan. 24, 1980, as amended at 45 FR 44946, July 2, 1980]

§ 296.7 Instructions for filing claims.

FIVE-DAY REPORT

(a) *Five-day report required to gain presumption of causation*—(1) *General.* Under § 296.9(b) damages or losses are presumed to be caused by items associated with OCS oil and gas exploration, development, or production activities if certain requirements are satisfied. One requirement is that a report on the location of the obstruction which caused the damage or loss, the nature of the damage or loss, and certain other information specified in paragraph (a)(4) of this section, *must be made to the NMFS within five (5) days after the date when the damage or loss is discovered.* If more than one commercial fisherman suffers loss from the same incident, the owner or operator of the commercial fishing vessel involved may file a five-day report on behalf of the entire crew, owner, and operator of the vessel. Note that filing of a five-day report must be followed up by filing of a detailed claim under paragraphs (b), (c), (d), and (e) of this section.

(2) *When and how to file a five-day report.* To qualify for the presumption of causation, a five-day report must be made to the nearest NMFS Regional Office within 5 days after the date the claimant discovered the loss or damage. Satisfaction of the five-day requirement is determined by the date of postmark, if the report is mailed; by the date of receipt of a call, if the report is telephoned or radio-telephoned; or, by the date of appearance, if the report is made in person at the nearest NMFS Regional Office. NMFS addresses and telephone numbers to use for making a five-day report are listed below:

Chief, Financial Services Branch, Northeast Region, National Marine Fisheries Service, Post Office Building, Box 1109, Gloucester, Massachusetts 01930 (617) 281-3600

Chief, Fisheries Development Analysis Branch, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702 (813) 893-3271

Chief, Fisheries Development Division, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 (213) 548-2575

Chief, Financial Services Branch, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Washington 98109 (206) 442-5532

Chief, Fisheries Development, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802 (907) 586-7224

(3) *Written confirmation of oral five-day report.* The Chief, FSD, strongly recommends that claimants confirm, in writing, as soon as possible, the substance and accuracy of each five-day report that is made by telephone, radiotelephone or other oral

communication. Address the written confirmation to:

Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven St., N.W., Washington, D.C. 20235.

(4) *Contents of five-day report.* Each five-day report must include the following information:

(i) The claimant's name and address;

(ii) The name and identifying number of the commercial fishing vessel involved;

(iii) The location of the obstruction which caused the damage or loss (see paragraph (e)(24) of this section for the methods of position fixing);

(iv) A statement concerning the activities, at the time the damage or loss occurred, of the vessel involved;

(v) A description of the nature of the damage or loss;

(vi) The date such damage or loss was discovered;

(vii) A description of the obstruction, if known; and

(viii) A statement concerning whether or not a surface marker or lighted buoy was attached to or near the obstruction.

DETAILED CLAIM FORM

(b) *Form of claim.* Claims must be in writing and include the information specified in paragraphs (e)(1) through (26) of this section. When available, claim forms may be obtained from any NMFS Regional Office or from the Chief, FSD.

(c) *Who must file, and when and where to file claims. Each claimant must file a claim (even those who filed five-day reports to gain the presumption of causation).* Each claim must be filed, in writing, with the Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven St. N.W., Washington, D.C. 20235, *no later then 60 days after the date the claimant discovers the damage or loss* with respect to which the claim is made. For the purpose of this paragraph (c), the term "filed" means delivered in person, or mailed (as determined by the date of postmark), to the Chief, FSD. The Chief, FSD, suggests that a claim which is mailed be sent by registered or certified mail, return receipt requested, so the claimant will have a record that the claim was received by the Chief, FSD.

(d) *Aggregating claims.* If more than one commercial fisherman suffers loss or damage arising from the same incident (for example, when several members of the crew lost income due to loss of fishing time), the claims of all such fishermen should be aggregated into one claim and the claim should be submitted on their behalf by the owner or operator of the commercial fishing vessel or vessels involved.

(e) *Contents.* Each claim shall be signed by the claimant and shall accurately and completely provide the following information, or so much of the information as the Chief, FSD, determines is necessary to process the claim:

General Identification

(1) The name, mailing address, telephone number, citizenship, and occupational status (for example, vessel owner, operator, or crew member on a vessel) of each claimant;

(2) The name, address, and telephone number of each person (for example, an attorney) retained to act on behalf of any claimant in pursuing the claim;

(3) The name of the commercial fishing vessel involved in the damage or loss for which the claim is submitted;

(4) The vessel's U.S. Coast Guard documentation number (or State registration number, if the vessel is not documented under Federal law);

(5) The home port of the vessel;

(6) The date when the claim is written;

Type and Extent of Damage or Loss

(7) A statement of: the type of fishing operation being conducted (for example, trawling for shrimp) and the type and size of vessel involved;

(8) The nature and extent of the damage or loss suffered or expected;

(9) Photographs (when available) of any physical damage to fishing gear (including a commercial fishing vessel);

(10) The amount, if any, claimed for physical damage to, or loss of, fishing

gear. If an amount is claimed, the claim shall include:

(i) Proof that the claimant owns the fishing gear damaged or lost (submit copies of the best evidence of ownership available, for example, sales receipts, affidavits, or other evidence);

(ii) A list of all components of fishing gear damaged or lost, together with the size, type, grade, and material of construction of each component damaged or lost;

(iii) The date, place, and cost of acquisition of all fishing gear damaged or lost;

(iv) If the lost or damaged gear is not replaced or repaired before the claim is filed, estimates from two different commercial fishing gear repair or supply companies of the present replacement cost of the fishing gear and the repair cost of the fishing gear (if it is repairable). If fishing gear of the type lost or damaged is usually made or repaired by the claimant, a detailed estimate prepared by the claimant identifying the repair or replacement cost of the fishing gear may be included in place of one of the estimates from commercial fishing gear repair or supply companies;

(v) If the fishing gear is repaired or replaced before a claim is filed under this Part, a copy of the itemized invoice or receipt for the repair or replacement of the fishing gear. If the fishing gear of the type lost or damaged is usually made or repaired by the claimant, an itemization of all costs (including receipts for materials) prepared by the claimant may be submitted in place of a receipt or invoice from a commercial fishing gear repair or supply company. The Chief, FSD, may request a second-source estimate for replacement or repair costs if the amounts shown on such receipts or invoices represent costs higher than the Agency's experience shows to be current for the time and place of the damage or loss; and

(vi) The estimated salvage value of the fishing gear, if it is not repairable;

(11) (i) The amount, if any, claimed for lost profits. The claimant shall describe fully the basis upon which the amount claimed is calculated. Each claim also shall contain a full statement of why the length of the time period which is the subject of the claim for lost profits is reasonable, and what action, if any, the claimant took to reduce or mitigate the amount of lost fishing time.

(ii) If an amount is claimed for lost profits, and if the claimant wants to negotiate a proposed settlement with the Chief, FSD, concerning the lost profits, the claimant shall submit the claimant's most recent filed Federal income tax return and supplemental documentation of income and expenses (for the vessel involved in the loss or damage). (See also § 296.6(c)(2)(vii)).

(iii) If the claimant does not want to negotiate a proposed settlement concerning the lost profits (for example, because the claimant does not want to submit the most recent filed Federal income tax return) or if the claimant does not accept the Chief, FSD's computation of the amount of lost profits, the amount of the lost profits will be determined by the ALJ. If the ALJ is to determine the amount of the lost profits, the claimant will be required to submit to the ALJ records documenting the claimant's profits during the 12 month period preceding the time period during which the lost profits were suffered. The claimant may be required to submit catch logs, landing receipts, receipts for expenses, crew share information and any other additional documentation concerning the claim for lost profits.

(iv) The Chief, FSD, or the ALJ may allow the claimant to submit a Federal income tax return, or other evidence of income and expenses pertaining to a different vessel than the vessel involved in the damage or loss, instead of the information for the vessel involved, if there exists good cause allowing such substitution;

(12) The amount, if any, claimed for consequential damages under § 296.6(c) (1), (3), and (4), together with a full description of what each amount claimed represents;

(13) Copies of all insurance policies covering the vessel (unless the loss or damage is to the vessel's fishing gear rather than the vessel itself) and a statement whether a claim has been, or will be, made against any insurance policy which may cover the damage or

loss with respect to which the claim against the Fund is filed;

(14) The name and mailing address of each person, if any, to whom the claimant has given oral or written notice that such person caused, or may have caused, the damage or loss; together with a copy of any written notice given each person and a statement whether each such person has paid, or will pay, the claimant for any portion of the damage or loss;

Circumstances of the Damage or Loss

(15) The date when the damage was first discovered by the claimant;

(16) The depth of the water, if known, at the time and site where the damage or loss occurred;

(17) The visibility at the time and site the damage or loss occurred;

(18) The direction, speed, and activities of the claimant's fishing vessel immediately before, during, and after the damage or loss occurred (including a full description of both the deployment of any fishing gear which is the subject of the claim and all attempts at the retrieval of the gear);

(19) A statement concerning whether or not the item or obstruction which caused the damage or loss was sighted and/or recovered. Describe any item or obstruction sighted or recovered (include a description of any identification markings). If the item or obstruction was physically recovered, it should be retained until the claim is resolved. Submit with the claim any available photographs of the item or obstruction;

(20) A statement concerning whether or not a lighted buoy or surface marker was attached to or anchored by the item or obstruction. If a buoy or marker was present, describe it;

(21) A full statement of the claimant's reason or believing that the obstruction which caused the damage or loss is associated with oil and gas exploration, development, or production on the Federal OCS rather than with similar oil and gas activities within State waters, other ocean users, or natural causes;

(22) The names and addresses of all known witnesses to the incident which caused the damage or loss (for example, crew members on your vessel who witnessed the incident, and the captain and crew of other vessels in the vicinity if they witnessed the incident). Statements from each witness should be submitted if available;

(23) A statement concerning whether or not the claimant filed a 5-day report of the damage or loss as provided in § 296.7(a). If a 5-day report was filed, state when it was filed, in what form it was filed (for example, in writing, or by telephone), and to whom in NMFS the report was made;

(24) The position of the obstruction causing the damage or loss (if the obstruction was dragged, give positions for both before and after it was dragged, if known), to be specified by using one or more of the following methods of position fixing. Claimants should use the most reliable method available aboard the vessel at the time of discovery of the damage or loss, such as: [1]

(i) Loran-C readings. Provide time delay readings from at least two Loran-C pairs (e.g., 7980-W and 7980-Y). Readings from additional pairs should be provided if available from the particular Loran-C receiver installed. If a coordinate converter is being used, the latitude and longitude readings may be furnished, but the actual Loran-C time delay readings are more useful because they are generally more accurate.

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[1] The methods are listed in descending order of accuracy. Fixes obtained by combining lines-of-position from two systems are acceptable if no single system will provide an accurate, unambiguous fix. An example is a Loran-C line-of-position and a radar range.

The use of dead reckoning, or running fixes, or both, to determine the vessel's position at the time of the damage or loss is acceptable only if no more accurate method were available. In this case, the claim shall include information sufficient to allow recalculation of the vessel position.

Bearings to shore and/or offshore objects shall be visually observed and provided in degrees. Radar bearings generally are not considered to be acceptable unless other methods are not available. If bearings are taken using a magnetic compass, they shall be converted to true by applying deviation and variation. The conversion calculation, including all figures used, must accompany the claim.

Brand name and model of all electronic and navigation equipment used in determining the geographic position of the incident should be included.

(ii) Distance (range) and direction (bearing) to fixed offshore objects such as lighthouses, light towers, and oil drilling or production platforms. Specify the name of each such object used (for example, Ambrose Light Tower, Shell Oil Platform No. 4281, etc.).

(iii) Distance (range) and direction (bearing) to fixed aids to navigation and landmarks which are identified on National Ocean Survey charts, such as radio towers, jetty lights, etc.

(iv) Distance (range) and direction (bearing) to prominent landmarks which are not identified on National Ocean Survey charts, but are readily identifiable for future reference.

(v) Loran-A readings. Provide time delay readings from at least two Loran-A rates. Readings from additional rates should be provided if available. Identify any skywave time delay readings as such.

(vi) Direction (bearing) to radiobeacons using a radio direction finder. Give each station's identifying call letters. Provide a copy of the radio direction finder deviation table if prepared for the fishing vessel.

(vii) Distance (range) and direction (bearing) to floating navigational aids, such as buoys. Identify any buoy by name, number, color, type and Light List number, if known.

(viii) Alternate navigation methods may be used if they are available. These include Raydist, Decca, and similar electronic navigation systems that may be in use. A celestial fix or line-of-position may be used if no other navigation method is available. In this case all calculations shall be included.

(25) A list of all crew members aboard the vessel at the time the loss or damage occurred; and

(26) Any other information which the claimant believes is relevant to the claim.

(f) *Other evidence.* The Chief, FSD, or the ALJ may require the submission of additional information, affidavits, estimates, or other evidence.

(g) *Amendment of claims.* A claimant may amend the claim at any time before the claim is referred to the ALJ.

(h) *Request for oral hearing before ALJ.* At any time before the claim is referred to the ALJ under § 296.8(f), a claimant may request the ALJ to hold an oral hearing concerning the claim. Any such request for an oral hearing must be filed in writing with the Chief, FSD, or with the General Counsel, and must state the claimant's reason for requesting an oral hearing.

(i) *Criminal penalty for fraudulent claim.* Any person who files a fraudulent claim is subject to criminal prosecution under 18 U.S.C. 287 and 1001, each of which, upon conviction, imposes a penalty of not more than a $10,000 fine and 5 years' imprisonment, or both.

[45 FR 6069, Jan. 24, 1980, as amended at 45 FR 44946, July 2, 1980; 46 FR 2303, Jan. 8, 1981]

§ 296.8 NMFS processing of claims.

(a) *Public notice of claims*—(1) *Action by the Chief, FSD.* Upon receipt of a claim, the Chief, FSD, will promptly:

(i) Transmit an abstract of the claim to the Secretary of the Interior;

(ii) Transmit the reported location of any obstruction which was not recovered and retained to the National Ocean Survey, which will inform the Defense Mapping Agency Hydrographic/Topographic Center; and;

(iii) Publish notice of the claim in the FEDERAL REGISTER. Each FEDERAL REGISTER notice published under this paragraph (a)(1) will contain:

(A) A brief statement of the nature and dollar amount of the claim, and the location where the damage or loss occurred;

(B) A statement that the Chief, FSD, may seek a proposed settlement agreement under paragraph (c) of this section; and

(C) A statement that any interested person is allowed 30 days following publication of the notice in the FEDERAL REGISTER to submit to the Chief, FSD, any evidence (or a description or photograph of any physical evidence) concerning the claim;

(2) *Action by the Secretary of the Interior.* (i) After receiving an abstract of the claim under paragraph (a)(1) of this section, the Secretary of the Interior will promptly send written notice of the claim to all persons known to have engaged in activities associated with OCS oil and gas exploration, development, or production in the vicinity where the damage or loss occurred.

(ii) Persons to be notified under paragraph (a)(2)(i) of this section shall include all persons known to have engaged in activities associated with OCS oil and gas exploration, development or production in all lease blocks either wholly or partially contained within a 3-mile radius of the reported location of the damage or loss, and such other persons as the Secretary of the Interior determines should receive notice of the damage or loss. In determining whether or not to notify such other persons, the Secretary of the Interior shall consider the nature of the damage or loss and the nature of OCS oil and gas exploration, development, or production activities (including surface supply traffic) in the vicinity of the damage or loss.

(3) *Responses to notice of claim.* (i) Any interested person may submit evidence at any hearing concerning a claim under this part in accordance with § 296.10(d), or concerning any proposed settlement under paragraph (c) of this section. Any such person who intends to submit evidence at a hearing or concerning any settlement under paragraph (c) of this section must notify the Chief, FSD, in writing, describing specifically the evidence to be submitted, not later than 30 days after publication of notice of the claim in the FEDERAL REGISTER under paragraph (a)(1) of this section. Where evidence concerns any proposed settlement or hearing on a claim, the Chief, FSD or the ALJ, respectively, may waive the 30-day rule for good cause, such as if the interested person first requesting, after the expiration of the 30 days, to submit evidence shows that such person did not previously have knowledge that such person would have an interest in the claim and that such person has evidence which may significantly affect the outcome of the proposed settlement or any hearing on the claim, or if the evidence first became available to such person after the expiration of the 30-day period.

(ii) Each person notified by the Secretary of the Interior under paragraph (a)(2) of this section shall, within thirty (30) days after the Secretary of the Interior sends the notice, notify the Chief, FSD, and the Secretary of the Interior whether that person admits or denies responsibility for the damages claimed.

(iii) Each person who is notified by the Secretary of the Interior under paragraph (a)(2) of this section and fails to give timely and proper notice of admission or denial of responsibility under paragraph (a)(3)(ii) of this section, shall be conclusively presumed for the purposes of § 296.11 to deny responsibility for the damages claimed.

(iv) If any person admits responsibility under paragraph (a)(3)(ii) of this section or otherwise, the Chief, FSD, will so inform the claimant and will not take any further action on the claim. If the person admitting responsibility later denies, or withdraws the admission of, responsibility, the Chief, FSD, will resumes processing the claim. If the person admitting responsibility does compensate the claimant for the loss with respect to which the claim was filed, the Chief, FSD, will forward the claim to the General Counsel for action under paragraph (d)(1) of this section.

(v) Any interested person may request to be admitted as a party to any hearing concerning the claim. Such request must be filed with the Chief, FSD, in writing, not later than thirty (30) days after publication of notice of the claim in the FEDERAL REGISTER under paragraph (a)(1) of this section. Such request will be ruled on by the ALJ under § 296.10(c)(3)(iv).

(b) *NMFS review of claims*—(1) *General.* The Chief, FSD, will promptly review each claim filed under § 296.7 and determine whether it is timely filed within the 60-day period specified in § 296.7 (c), sufficiently complete under § 297.7(e) to allow processing, and eligible on its face.

(2) *Timeliness of claims.* (i) The 60-day filing requirement of § 296.7(c) is

satisfied by the filing of an improperly completed or incomplete claim.

(ii) If the Chief, FSD, finds that the claim was not timely filed under § 296.7(c), the Chief, FSD, will refer the matter to the General Counsel.

(3) *Completeness of claims.* (i) If the Chief, FSD, finds that the claim is not sufficiently complete to allow processing, the Chief, FSD, will send to the claimant a written notice stating the deficiency in the claim.

(ii) If the claimant fails to correct the deficiency within 60 days after the date the notice of the deficiency is sent to the claimant, the claim is not eligible for compensation under this part unless the Chief, FSD, for good reason extends the period for correcting deficiencies.

(iii) If the Chief, FSD, finds that the claim is ineligible under paragraph (b)(3)(ii) of this section, the Chief, FSD, will refer the matter to the General Counsel.

(4) *Factual eligibility of claims.* If the Chief, FSD, finds that a claim is not eligible on its face (for example, because the claim states facts which make it ineligible under § 296.5(c)(1), (3), (5)(ii), (7) or (8)), the Chief, FSD, will refer the matter to the General Counsel.

(c) *Proposed settlement or other proposed agency recommendation.* (1) After determining that the claim is timely filed, sufficiently completed, and eligible on its face, the Chief, FSD, may contact the claimant and negotiate a proposed settlement of the claim.

(2) If the Chief, FSD, and the claimant agree to a proposed settlement, the Chief, FSD, will forward the proposed settlement to the General Counsel for action under paragraph (d) of this section.

(3) The Chief, FSD, will not forward any proposed settlement to the General Counsel sooner than thirty (30) days after publication of notice of the claim in the FEDERAL REGISTER under paragraph (a)(1) of this section.

(4) The Chief, FSD, may forward to the General Counsel a proposed agency recommendation concerning the claim. The proposed agency recommendation may be, among other things, to:

(i) Approve the claim;

(ii) Approve a proposed settlement of the entire claim or part of the claim; or

(iii) Deny the claim.;

(d) *Action by General Counsel*—(1) *Concerning timeliness, completeness and eligibility of claims.* The General Counsel will review any finding made by the Chief, FSD, under paragraph (b)(2), (3) or (4) of this section, and will determine whether to send the claim, together with an official agency recommendation that the claim be denied, to the ALJ for an expedited proceeding under § 296.10(l) of this part. If the General Counsel finds that the claimant has abandoned the claim by failing to respond to a notice of deficiency sent by the Chief, FSD, under paragraph (b)(3) of this section, by expressly withdrawing the claim from further consideration, or by accepting payment from another source, the General Counsel may close the file without further action under this Part 296, regardless of whether public notice of such a claim has been given under paragraph (a) of this section.

(2) *Concerning proposed settlement or other proposed agency recommendation.* The General Counsel will review any proposed agency recommendation made by the Chief, FSD, under paragraph (c) of this section and will determine the official agency recommendation, if any, that will be forwarded to the ALJ.

(3) *Notice of official agency recommendation.* After determining the official agency recommendation (if any) under paragraph (d)(1) or (d)(2) of this section, the General Counsel will:

(i) Give written notice to the claimant concerning the official agency recommendation;

(ii) Publish a notice of the official agency recommendation in the FEDERAL REGISTER; and

(iii) Not sooner than 15 days after publication of the notice referred to in paragraph (d)(3)(ii) of this section, refer the claim to the ALJ under paragraph (f) of this section for consideration under § 296.10.

(e) *Objection to certain agency recommendations.* Any interested person who objects to an agency recommendation to approve either the claim or a proposed settlement of the claim may request the ALJ to conduct an oral hearing concerning the claim. Any such request for an oral hearing must be filed in writing with the General Counsel within fifteen (15) days after the FEDERAL REGISTER notice is published under paragraph (d)(3) of this section and must state the interested person's reason for requesting an oral hearing. During such 15-day period, any interested person also may file with the General Counsel a request to be admitted as a party to any hearing concerning the claim. Each such request shall be in writing and shall include a statement of the reasons why the request was not filed in a timely manner under § 296.8(a)(3)(v).

(f) (1) The General Counsel will request that an ALJ be assigned to adjudicate the claim; and

(2) *Referral of a claim to the ALJ.* Upon expiration of the fifteen (15) day period following publication of the FEDERAL REGISTER notice (if any) under paragraph (d)(3) of this section, the General Counsel will refer to the ALJ the following items:

(i) The claim;

(ii) Any agency recommendation under paragraph (d)(2) of this section;

(iii) Any request, under paragraph (a)(3)(i) of this section, by an interested person to submit evidence at a hearing;

(iv) Any request under paragraph (a)(3)(v) or (e) of this section, by an interested person to be admitted as a party to any hearing; and:

(v) Any request, by a claimant under § 296.7(h) or by an interested person under paragraph (e) of this section, that an oral hearing be conducted concerning the claim.;

(g) *Disclosure of Copy of Claim.* Any interested person shall upon written request be provided with a copy of such portion of a claim as the General Counsel determines is disclosable under applicable law. If the General Counsel determines that a portion of a claim requested by such person is not disclosable, the requesting interested person may appeal the General Counsel's decision to the ALJ.

[45 FR 6069, Jan. 24, 1980, as amended at 45 FR 44947, July 2, 1980; 46 FR 2303, Jan. 8, 1981; 46 FR 3534, Jan. 15, 1981]

§ 296.9 Burden of proof and presumption of causation.

(a) *Burden of proof.* The claimant has the burden to establish, by a preponderance of the evidence, all facts necessary to demonstrate eligibility for, and the amount of, compensation under this part, including, but not limited to:

(1) The identity or nature of the item which caused the damage to or loss of the fishing gear which is the subject of the claim; and

(2) That the item described in paragraph (a)(1) of this section is associated with oil and gas exploration, development, or production activities on the Outer Continental Shelf.

(b) *Presumption of Causation.* Paragraph (a) of this section notwithstanding, damages or losses are presumed to be caused by items associated with oil and gas exploration, development, or production activities on the OCS if the claimant establishes that:

(1) The claimant's commercial fishing vessel was being used for commercial fishing and was located in an area affected by OCS oil and gas exploration, development, or production activities (the damage or loss need not occur in one of the geographic areas described in § 296.3(b));

(2) A report on the location of the obstruction which caused such damage or loss, and the nature of such damage or loss, was properly made under § 296.7(a) within five days after the date when such damage or loss was discovered;

(3) There was no record on the most recent nautical charts issued by the National Ocean Survey, NOAA, or in any weekly Notice to Mariners issued by the Defense Mapping Agency Hydrographic/Topographic Center on or before the date such damage or loss was suffered, that an obstruction existed in the immedate vicinity where the damage or loss occurred; and

(4) There was no proper surface marker or lighted buoy attached, or closely anchored, to such obstruction.

(c) *Geographic exclusion from presumption of causation.* Damage or loss occurring within a one-quarter mile radius of obstructions recorded on charts or in a Notice to Mariners, or properly marked, as described in paragraphs (b)(3) and (b)(4) of this section, is presumed to involve the recorded obstruction.

§ 296.10 Hearings.

(a) *General.* Hearings on claims filed under this part are governed by 5 U.S.C. 554 and this part.

(b) *Beginning the hearing process.* The General Counsel institutes a hearing by referring the claim to the ALJ.

(c) *Administrative Law Judges.* (1) *Who presides.* All hearings shall be presided over by an ALJ appointed under 5 U.S.C. 3105.

(2) *How assigned.* The General Counsel will assure that an ALJ is designated.

(3) *Powers.* ALJ's have the powers and duties necessary for the conduct of fair and impartial hearings, as specified by 5 U.S.C. 556 or this part, including the power to:

(i) Regulate the course of the hearing and the conduct of the parties and their counsel therein, including but not limited to the power to determine whether to conduct an oral hearing concerning the claim (for example, in response to requests under § 296.7(h) or § 296.8(e)), and the power (when the ALJ determines that a party will not be prejudiced thereby) to require the submission of part or all of the evidence in written form;

(ii) When necessary to expedite the proceeding in order to render a decision within 120 days after the claim is referred to the ALJ, consider and rule upon motions for, or require in the ALJ's discretion, special procedures including but not limited to the rendering of a decision without the opportunity for written briefs submitted by the parties;

(iii) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(iv) Rule upon requests submitted under § 296.8(a)(3)(v) or § 296.8(e) of this part to participate as a party in the proceedings, by allowing, denying, or limiting such participation, provided, however, that the claimant and the General Counsel shall be allowed to participate as full parties;

(v) Administer oaths and affirmations;

(vi) Rule upon requests for, and issue, subpoenas for the attendance or testimony of witnesses and the production of books, records, and other evidence, upon proper application as provided in paragraph (s) of this section;

(vii) Rule on discovery requests, impose discovery schedules, and take or cause depositions or interrogatories to be taken;

(viii) Rule on requests for protective orders to protect persons in the discovery process from undue burden or expense, or for other good cause;

(ix) Require, at or prior to any hearing, the submission and exchange of evidence including, but not limited to, that described in § 296.7(f) of this part;

(x) Rule upon offers of proof and receive relevant evidence;

(xi) Introduce documentary or other evidence into the record;

(xii) Examine and cross-examine witnesses;

(xiii) Consider and rule upon motions (including motions for summary judgment), procedural requests, and similar matters;

(xiv) Make and file decisions in conformity with this part; and

(xv) Take any action authorized by the rules in this part or in conformance with 5 U.S.C. 554.

PREHEARING PROCESS

(d) *Participation in hearings by interested persons*—(1) *Notice of intent to submit evidence.* Any interested person who intends to submit evidence at any hearing conducted concerning the claim, shall file notice under § 296.8(a)(3)(i) of this part. The ALJ may waive the 30-day rule of § 296.8(a)(3)(i) for good cause shown, such as the grounds stated in that section.

(2) *Determination by the ALJ.* (i) An interested person may submit evidence at any hearing conducted with respect to a claim if the ALJ determines that such evidence is relevant to facts in dispute concerning the claim being adjudicated.

(ii) That an interested person may submit evidence under this paragraph (d)(2) at a hearing does not entitle the interested person to participate in other ways in the hearing unless allowed by the ALJ under paragraph (d)(3) of this section.

(3) *Participation in addition to submission of evidence.* The ALJ may allow an interested person to submit oral testimony, oral arguments, briefs, or to cross-examine witnesses or participate in other ways if the ALJ determines:

(i) That the interests of justice would be better served by allowing such participation by the interested person; and

(ii) That there are compelling circumstances favoring such participation by the interested person.

(4) *Copy of claim.* Any interested person who is allowed by the ALJ to submit evidence or to participate otherwise under this paragraph (d) shall, upon the interested person's request to the ALJ, be provided with a copy of such portion of the claim as the ALJ determines is disclosable under applicable law. The ALJ will decide any appeal by an interested person of any determination by the General Counsel under § 296.8(g) of this part that a portion of a claim is not disclosable under applicable law.

(5) *Claimant, General Counsel and other parties.* Nothing in this paragraph (d) shall affect the right of participation of the claimant, the General Counsel, and any other person admitted as a full party by the ALJ.

(e) *Location and time of hearing.* (1) Except as provided in paragraph (e)(3) of this section, any hearing under this section shall be conducted within the United States judicial district within which the matter giving rise to the claim occurred.

(2) Except as provided in paragraph (e)(3) of this section, if the matter occurred within two or more districts, the hearing shall be conducted in any of the affected districts, or, if the matter occurred outside of any district, in the nearest district.

(3) The requirements of paragraphs (e)(1) and (e)(2) of this section concerning the location of any hearing may be waived upon agreement by the claimant, the General Counsel, and all other parties to the hearing.

(4) The ALJ shall determine the location and time of any hearing, after giving due regard to the convenience of all parties and interested persons allowed to participate under paragraph (d) of this section.

(f) *Notice of hearings.* As soon as practicable after the claim is referred to the ALJ, the ALJ shall serve notice upon the claimant, the Chief, FSD, the General Counsel, any other parties, and any interested person allowed to participate under paragraph (d) of this section, concerning the time and place for, and the nature of, any hearing. The notice shall include the legal authority and jurisdiction under which the hearing is to be held, and shall describe the general substance of the matters of fact and law asserted. All notices of hearing will be issued at least 15 days before the date for which a hearing is scheduled.

(g) *Prehearing conference.* (1) Upon the ALJ's own motion or the motion of any party, the ALJ may direct the parties or their counsel to meet (in person, by telephone conference call, or otherwise) in a prehearing conference to consider:

(i) Simplification of the issues;

(ii) The necessity or desirability of amendments to the claim, settlement agreement, or agency recommendation for purposes of clarification, simplification, or limitation of the issues;

(iii) Stipulations, admissions of fact and of contents, and authenticity of documents;

(iv) The necesssity or desirability of conducting an oral hearing concerning the claim;

(v) Exchange of evidence, witness lists, and summaries of expected testimony;

(vi) Limitation of the number of witnesses; and

(vii) Such other matters as may tend to expedite the disposition of the proceedings.

(2) The record shall show the matters disposed of by order and by agreement in such prehearing conferences.

(h) *Amendment of claims.* At any time after the claim is referred to the ALJ and before the close of the hearing, the ALJ may, in the ALJ's discretion and on such terms as the ALJ may approve, allow the claimant to amend the claim. The 120-day decision period described in 43 U.S.C. 1845(d) shall begin on the date the amended claim is received by the ALJ.

(i) *Settlement*—(1) *Between claimant and the Fund.* (i) If a written agreement to settle part or all of the claim is signed by the claimant, and approved by the General Counsel, and filed with the ALJ before the ALJ issues a decision under paragraph (m)(2) of this section, then the hearing shall be suspended and the ALJ shall consider the proposed settlement. The ALJ may allow any other parties or interested persons allowed to participate under paragraph (d) of this section the opportunity to comment upon the proposed settlement.

(ii) The ALJ may certify an amount to be paid by the Fund on the basis of the proposed settlement, without conducting an oral hearing, if the ALJ determines, taking into consideration such facts of the claim as are available at the time of the proposed settlement, that the terms and amount of the proposed settlement are consistent with §§ 296.5 and 296.6 of this part.

(2) *Between claimant and a person other than the Fund.* A written agreement between the claimant and any person to settle part or all of the claim by means other than by payment from the Fund under this part, if filed with the ALJ before the ALJ issues a decision under paragraph (m)(2) of this section shall, upon its filing, terminate the hearing proceeding with respect to the part of the claim covered by the agreement. Upon receipt of the agreement, the ALJ shall dismiss the part of the claim covered by the agreement, and neither the claimant nor any party to such agreement shall be charged any costs under § 296.11 of this part concerning the part of the claim covered by the agreement.

HEARINGS AND RELATED MATTERS

(j) *Appearances*—(1) *Representation.* A party may appear at a hearing under this part in person, by counsel, or by other representative.

(2) *Failure to appear.* Failure of a party to appear at a hearing (i) constitutes waiver of the right to a hearing under this part; (ii) constitutes consent of the party to the making of a decision on the record of the hearing; but (iii) shall not be deemed to be a waiver of the right to be served with a copy of the ALJ's decision.

(k) *Hearings.* (1) *Order of presenting evidence.* Except as may be determined otherwise by the ALJ, the claimant shall present evidence first at the hearing.

(2) *Evidence*—(i) *General.* The testimony of witnesses shall be upon oath or affirmation administered by the ALJ and shall be subject to such cross-examination as may be required for a full and true disclosure of the facts. The ALJ shall exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(ii) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, the party shall state briefly the grounds for such objections. Rulings on each objection shall appear in the record.

(iii) *Exceptions.* Formal exception to an adverse ruling is not required.

(iv) *Surveyed obstructions.* The ALJ shall consider evidence of any obstructions in the area concerned identified by a survey conducted by the National Ocean Survey under 43 U.S.C. 1847.

(3) *Authority of ALJ to expedite adjudication.* To prevent unnecessary delays or an unnecessarily large record, the ALJ may:

(i) Limit the number of witnesses whose testimony may be cumulative;

(ii) Strike argumentative, repetitious, cumulative, or irrelevant evidence;

(iii) Take necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination; and

(iv) Impose such time limitations on arguments as the ALJ determines appropriate, having regard for the volume of the evidence and the importance and complexity of the issues involved.

(4) *Official notice.* Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice or concerning which the Department of Commerce,

by reason of its functions, is presumed to be expert. The parties shall be given adequate notice, at the hearing or otherwise, before the ALJ's decision, of the matters so noticed, and upon timely request by a party shall be given adequate opportunity to show the contrary.

(5) *Verbatim record.* The ALJ or NOAA will arrange for a verbatim tape or other record of any oral hearing proceedings. A transcript will not be prepared unless either an appeal is taken under § 296.12 of this part or the ALJ specificially so orders. Any person may obtain a transcript upon written request filed with the reporter and upon payment of the fees at the rate provided in the agreement with the reporter.

(l) *Expedited proceeding to determine eligibility of a claim.* (1) If the General Counsel Recommends denial of a claim under § 296.8(d)(1) of this part, the ALJ may conduct an expedited proceeding to determine whether the claim is eligible for compensation under this part. For the purposes of the 120-day time period described in 43 U.S.C. 1845(d), sending a claim to an ALJ for a determination of eligibility under this paragraph (l) shall not be construed as a referral to the ALJ for adjudication of the case.

(2) If the ALJ determines that the claim is eligible for compensation under this part, the claim will be returned to the Chief, FSD, and such claim will be processed under § 296.8. A determination by the ALJ that a claim is eligible is not a final decision appealable under § 296.12 of this part.

(3) A determination by the ALJ that a claim is ineligible for compensation under this Part shall constitute a final decision appealable under § 296.12 of this part.

DECISION

(m) *Decision of the hearing examiner*—(1) *Proposed findings of fact, conclusions of law, and order.* The ALJ may allow each party to file with the ALJ proposed findings of fact, conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs must be filed within ten (10) days after the hearing or within such additional time as the ALJ may allow. Such proposals and briefs shall refer to all portions of the record and to all authorities relied upon in support of each proposal. Reply briefs must be submitted within ten (10) days after receipt of the proposed findings and conclusions to which they respond, unless the ALJ allows additional time.

(2) *Time of decision.* (i) The ALJ shall issue a written decision upon the record in the case, which shall become the final decision in the administrative process, as specified by 43 U.S.C. section 1845(h)(1), upon service thereof on the claimant, the Chief, FSD, the General Counsel, and all other parties.

(ii) The ALJ shall issue a decision not later than one hundred and twenty (120) days after the date the ALJ received the claim from the General Counsel. This time limitation may be waived upon agreement by the claimant, the General Counsel, and all other parties to the hearing.

(iii) The ALJ may stay the effective date of the decision until, for example, after an appeal under § 296.12 of this part has been decided by the appropriate United States Court of Appeals or the Supreme Court of the United States, if the ALJ determines, stating the reasons in the ALJ's decision, that the interests of justice would be better served by the stay.

(3) *Contents of decision.* The decision of the ALJ shall state:

(i) The ALJ's findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record. In determining the amount of an award, the ALJ shall state reasons in view of the applicable factors which must be considered, as set forth in §§ 296.5 and 296.6 of this part. The ALJ shall specify from which area account any award shall be made and may, in appropriate cases, apportion the award between two or more area accounts. The ALJ shall assess costs under § 296.11 of this part if the ALJ finds that the claimant, or any person who denies responsibility for damages with respect to which the claim is made, is responsible for the damage which is the subject of the claim;

(ii) The ALJ's reasons for rejecting the findings and conclusions, if any, proposed by the parties; and

(iii) Such other matters as the ALJ considers appropriate.

(4) *Transmittal of decision.* The ALJ shall serve a copy of the decision on the claimant, the Chief, FSD, the General Counsel and all other parties.

(n) *Storage of record.* The ALJ shall arrange for safe storage of the record of the proceeding. The record shall include: the pleadings, motions, and requests filed in written form, rulings thereon, the verbatim record of the testimony and proceedings taken at the hearing, together with the exhibits admitted in evidence, any documents or papers filed in connection with prehearing conferences, such proposed findings of fact, conclusions of law, order, and supporting reasons, and reply briefs, as may have filed, the ALJ's decision, and such exceptions, statements of objections, and briefs in support thereof, as may have been filed in the proceeding.

MISCELLANEOUS

(o) *Motions and requests.* Motions or requests shall be filed in writing with the ALJ or shall be stated orally and made part of the hearing record. Each motion or request shall state the particular order, ruling, or action desired, and the grounds therefor.

(p) *Service of documents*—(1) *Documents to be served.* All papers filed by or with the ALJ (including, but not limited to, orders, briefs, proposed findings of fact and conclusions of law, motions, requests, and proposed settlements) shall be served upon the claimant, the Chief, FSD, the General Counsel, and all other parties at the same time as they are filed.

(2) *Manner of service.* Service upon any party shall be made by delivering or mailing a copy to the known address of the party. If a party is represented by counsel, the service shall be made upon the counsel.

(3) *Proof of service.* A certificate of the person serving the document by personal delivery or by mailing, setting forth the manner of said service, shall be proof of the service.

(q) *Witnesses and fees.* Witnesses subpoenaed shall be paid the same fees and mileage, and in the same manner, as are paid for like services in the District Court of the United States for the district in which the hearing is located.

(r) *Depositions*—(1) *Application.* Any party desiring to take the deposition of a witness shall make application in writing to the ALJ, setting forth the reasons why such deposition should be taken; the time when, the place where, and the name and mailing address of the person before whom the deposition is requested to be taken; the name and address of each witness to appear for deposition; and the subject matter concerning which each is expected to testify.

(2) *How, and by whom taken.* Depositions may be taken orally or upon written interrogatories before any person (the "Officer") designated by the ALJ.

(3) *Notice.* Such notice as the ALJ shall order shall be given for the taking of a deposition, but this ordinarily will not be less than five (5) days' written notice when the deposition is to be taken within the United States and ordinarily will not be less than twenty (20) days' written notice when the deposition is to be taken elsewhere.

(4) *Taking and receiving in evidence.* Each witness testifying upon deposition shall be sworn and any party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, signed by the witness unless waived, and certified by the Officer. Thereafter, the Officer shall deliver or mail the same to each party. Subject to such objections to the questions and answers as were noted at the time of taking the deposition which would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by any party taking it as against any party who was present or represented at the taking of the deposition or who had due notice thereof.

(s) *Subpoenas.* A party may request the ALJ to issue, or the ALJ on the ALJ's own motion may issue, a subpoena for the attendance and testimony of witnesses and for production of documentary or other evidence. Applications for subpoenas shall be in writing, and shall specify the general relevance and reasonable scope of the evidence sought to be produced.

(t) *Extension of time.* The time for the filing of any document under this section may be extended by the ALJ if:

(1) The request for the extension of time is made before or on the final date allowed for the filing; and

(2) The ALJ, after giving written or oral notice to and considering the views of all other parties (when practicable), determines that there is good reason for the extension.

[45 FR 44948, July 2, 1980]

§ 296.11 Payment of costs.

(a) *By person denying responsibility for damage.* Any person who:

(1) Is notified by the Secretary of the Interior under § 296.8(a);

(2) Denies, or fails to either affirm or deny, responsibility for the damages claimed; and

(3) Is found by the ALJ or by a court of law to be responsible for the damage, shall pay the costs of the proceedings under this part with respect to such claim.

(b) *By the claimant.* Any claimant who files a claim under this part and is found by the ALJ or by a court of law to be responsible for such damage, shall pay the costs of the proceedings under this part with respect to such claim.

(c) *By person denying responsibility for damage and the claimant.* If the ALJ or a court of law finds both the claimant and a person described in paragraphs (a) (1) and (2) of this section to have responsibility for such damage, then the cost of proceedings under this part shall be apportioned equitably between them.

§ 296.12 Appeals.

(a) *General.* Any person who suffers legal wrong or who is adversely affected or aggrieved by the decision of an ALJ under this part may, no later than sixty (60) days after the ALJ issues a decision under § 296.10(m), seek judicial review of such decision in the United States Court of Appeals for the Federal judicial circuit in which the damage occurred, or, if such damage occurred outside of any circuit, in the United States Court of Appeals for the nearest circuit.

(b) *Notice.* Any person who appeals a decision of an ALJ under this section shall so notify the claimant, the Chief, FSD, the General Counsel, and any other party in writing at the same time the appellant files an appeal with the appropriate United States Court of Appeals.

[45 FR 6069, Jan. 24, 1980, as amended at 45 FR 44951, July 2, 1980]

§ 296.13 Payment of award for claim.

(a) *Amount.* The Chief, FSD, will pay the amount of the award certified in the decision of the ALJ under § 296.10(m).

(b) *Area account.* The payment will be disbursed from the area account or accounts specified in the decision of the ALJ under §296.10(m).

(c) *Time of payment.* (1) No payment will be made under this section until the claimant has signed a subrogation agreement under § 296.14.

(2) No payment will be made under this section if an appeal has been filed under § 296.12.

[45 FR 6069, Jan. 24, 1980, as amended at 45 FR 44951, July 2, 1980]

§ 296.14 Subrogation.

(a) *Agreement.* Before receiving payment under this part, a claimant shall sign a subrogation agreement in a form satisfactory to the General Counsel which:

(1) Assigns to the Fund all rights the claimant has, and might have, to proceed against any person for damages with respect to any part of the damage or loss for which the award is being made; and

(2) Provides that the claimant will assist the Fund in any reasonable way to pursue collection of the subrogated rights.

(b) *Collection of subrogated rights.* In those instances in which it appears that a reasonable chance of successful collection exists, the General Counsel will refer the subrogated rights to the Department of Justice for collection.

§ 296.15 Computation of time.

Saturdays, Sundays, and Federal Government holidays shall be included in computing the time period allowed for filing any document or paper under this part (including the five-day report and claim referred to in §§ 296.7 (a) and (c), respectively), but when such time period expires on such a day, such time period shall be extended to include the next following Federal Government working day.

APPENDIX I

A. *Freeport District*—The U.S. Geological Survey's Freeport District incorporates all, or the indicated portions, of the OCS areas shown on the following official maps:

1. OCS Leasing Map, South Padre Island Area, Texas Map. No. 1 (Approved July 16, 1954). That portion seaward of the 3-league line.

2. OCS Leasing Map, South Padre Island Area, East Addition, Texas Map. No. 1A (Approved May 6, 1965).

3. OCS Leasing Map, North Padre Island Area, Texas Map. No. 2 (Approved July 16, 1954). That portion seaward of the 3-league line.

4. OCS Leasing Map, North Padre Island Area, East Addition, Texas Map. No. 2A (Approved May 6, 1965).

5. OCS Leasing Map, Mustang Island Area, Texas Map No. 3 (Approved July 16, 1954; Revised October 30, 1961). That portion seaward of the 3-league line.

6. OCS Leasing Map, Mustang Island Area, East Addition, Texas Map No. 3A (Approved January 23, 1967).

7. OCS Leasing Map, Matagorda Island Area, Texas Map No. 4 (Approved July 16, 1954). That portion seaward of the 3-league line.

8. OCS Leasing Map, Brazos Area, Texas Map No. 5 (Approved July 16. 1954). That portion seaward of the 3-league line.

9. OCS Leasing Map, Brazos Area, South Addition, Texas Map No. 5B (Approved September 24, 1959).

10. OCS Leasing Map, Galveston Area, Texas Map No. 6 (Approved July 16, 1954). That portion seaward of the 3-league line.

11. OCS Leasing Map, Galveston Area, South Addition, Texas Map No. 6A (Approved September 24, 1959).

12. OCS Leasing Map, High Island Area, Texas Map No. 7 (Approved July 16. 1954; Revised August 1955). That portion seaward of the 3-league line.

13. OCS Leasing Map, High Island Area, East Addition, Texas Map No. 7A (Approved January 23, 1967). That portion seaward of the 3-league line.

14. OCS Leasing Map, High Island Area, South Addition, Texas Map No. 7B (Approved September 24, 1959).

15. OCS Leasing Map, High Island Area, East Addition, South Extension, Texas Map No. 7C (Approved September 24, 1959).

16. OCS Leasing Map, Sabine Pass Area, Texas Map No. 8 (Approved March 7, 1977), That portion on the Texas side of the Texas-Louisiana Line that is seaward of the 3-league line.

17. OCS Official Protraction Diagram, Corpus Christi NG 14-3 (Approved June 5, 1974; Revised January 27, 1976).

18. OCS Official Protraction Diagram, Port Isabel NG 14-6 (Approved June 5, 1974; Revised January 27, 1976).

19. OCS Official Protraction Diagram, East Breaks NG 15-1 (Approved June 8, 1973; Revised January 27, 1976).

20. OCS Official Protraction Diagram, Alaminos Canyon NG 15-4 (Approved June 5, 1974; Revised March 26, 1976).

21. OCS Official Protraction Diagram, Garden Banks NG 15-2 (Approved February 15, 1973; Revised December 2, 1976). That portion west of a north-south line formed by the east line of block 142 at the northeast corner and block 978 at the southeast corner.

22. OCS Official Protraction Diagram, Keathley Canyon NG 15-5 (Approved June 5, 1974; Revised December 2, 1976). That portion west of a north-south line formed by the east line of block 10 at the northeast corner and block 978 at the southeast corner.

B. *Lake Charles District*—The U.S. Geological Survey's Lake Charles District incorporates all, or the indicated portions, of the OCS areas shown on the following official maps:

1. OCS Leasing Map, West Cameron Area, Louisiana Map No. 1 (Approved June 8, 1954; Revised July 22, 1954). That portion more than three geographical miles seaward from the lines described in the supplemental decree of the United States Supreme Court, June 16, 1975 (U.S. versus Louisiana, 422 US 13).

2. OCS Leasing Map, West Cameron Area, West Addition, Louisiana Map No. 1A (Approved November 15, 1955; Revised January 30, 1957).

3. OCS Leasing Map, West Cameron Area, South Addition, Louisiana Map No. 1B (Approved September 8, 1959).

4. OCS Leasing Map, East Cameron Area, Louisiana Map No. 2 (Approved June 8, 1954; Revised August 1, 1973). That portion more than three geographical miles seaward from the lines described in the supplemental decree of the United States Supreme Court, June 16, 1975 (U.S. versus Louisiana, 422 US 13).

5. OCS Leasing Map, East Cameron Area, South Addition, Louisiana Map No. 2A (Approved September 8, 1959).

6. OCS Leasing Map, Vermilion Area, Louisiana Map No. 3 (Approved June 8, 1954; Revised June 25, 1954; Revised July 22, 1954). That portion more than three geographical miles seaward from the lines described in the supplemental decree of the United States Supreme Court, June 16, 1975 (U.S. versus Louisiana, 422 US 13).

7. OCS Leasing Map Vermilion Area. South Addition. Louisiana Map No. 3B.

8. OCS Leasing Map. Sabine Pass Area. Louisiana Map No. 12 (Approved March 7, 1977). That portion on the Louisiana side of the Texas-Louisiana line, more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court. June 16, 1975 (U.S. versus Louisiana, 422 US 13).

9. OCS Official Protraction Diagram. Garden Banks NG 15-2 (Approved February 15, 1973; Revised December 2, 1976). That portion bordered on the west by a north-south line formed by the west line of block 143 at the northwest corner and the west line of block 979 at the southwest corner and bordered on the east by a north-south line formed by the east line of block 80 at the northeast corner and the east line of block 1004 at the southeast corner.

10. OCS Official Protraction Diagram. Keathley Canyon NG 15-5 (Approved June 15, 1974; Revised December 2, 1976). That portion bordered on the west by a north-south line formed by the west line of block 11 at the northwest corner and the west line of block 979 at the southwest corner and bordered on the east by a north-south line formed by the east line of block 36 at the northeast corner and the east line of block 1004 at the southeast corner.

C. *LaFayette District*—The U.S. Geological Survey's Lafayette District incorporates all, or the indicated portions, of the OCS areas shown on the following official maps:

1. OCS Leasing Map. South Marsh Island Area. Louisiana Map No. 3A (Approved August 7, 1959).

2. OCS Leasing Map. South Marsh Island Area. South Addition. Louisiana Map No. 3C [Approved September 8, 1959).

3. OCS Leasing Map. South Marsh Island Area. North Addition. Louisiana Map No. 3D (Approved April 16, 1971; Revised January 18, 1972). That portion more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court. June 16, 1975 (U.S. versus Louisiana, 422 US 13).

4. OCS Leasing Map. Eugene Island Area. Louisiana Map No. 4 (Approved June 8, 1954; Revised July 22, 1954). That portion more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court. June 16, 1975 (U.S. versus Louisiana, 422 US 13).

5. OCS Leasing Map. Eugene Island Area. South Addition. Louisiana Map No. 4A (Approved September 8, 1959).

6. OCS Official Protraction Diagram. Ewing Bank NH 15-12 (Approved February 15, 1973; Revised December 2, 1976). That portion that consists of blocks 932, 933, 937, 938, 975, 976, 977, 978, 979, 981, 982.

7. OCS Official Protraction Diagram. Green Canyon NG 15-3 (Approved February 15, 1973; Revised December 2, 1976). That portion west of a north-south line formed by the east line of block 12 at the northeast corner and the east line of block 980 at the southeast corner.

8. OCS Official Protraction Diagram. Walker Ridge NG 15-6 (Approved June 5, 1974; Revised December 2, 1976). That portion west of a north-south line formed by the east line of block 12 at the northeast corner and the east line of block 980 at the southeast corner.

9. OCS Official Protraction Diagram. Garden Banks. NG 15-2 (Approved February 15, 1976; Revised December 2, 1976). That portion east of a north-south line formed by the west line of block 81 at the northwest corner and the west line of block 1005 at the southwest corner.

10. OCS Official Protraction Diagram. Keathley Canyon NG 15-5 (Approved June 5, 1974; Revised December 2, 1976). That portion east of a north-south line formed by the west line of block 37 at the northwest corner and the west line of block 1005 at the southwest corner.

D. *Houma District*—The U.S. Geological Survey's Houma District incorporates all, or the indicated portions, of the OCS areas shown on the following official maps:

1. OCS Leasing Map. Ship Shoal Area. Louisiana Map No. 5 (Approved June 8, 1954). That portion more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court, June 16, 1975 (U.S. versus Louisiana, 422 US 13).

2. OCS Leasing Map. Ship Shoal Area. South Addition. Louisiana Map No. 5A (Approved September 8, 1959).

3. OCS Leasing Map. South Pelto Area. Louisiana Map No. 6 (Approved June 8, 1954; Revised July 22, 1954; Revised December 9, 1954). That portion more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court. June 16, 1975 (U.S. versus Louisiana, 422 US 13).

4. OCS Leasing Map. Bay Marchand Area. Louisiana Map No. 6 (Approved June 8, 1954; Revised July 22, 1954; Revised December 9, 1954). That portion more than three geographical miles seaward from the line described in the supplemental decree of the

United States Supreme Court. June 16, 1975 (U.S. versus Louisiana, 422 US 13).

5. OCS Leasing Map. South Timbalier Area. Louisiana Map No. 6 (Approved June 8, 1954; Revised July 22, 1954; Revised December 9, 1954). That portion more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court. June 16, 1975 (U.S. versus Louisiana, 422 US 13).

6. OCS Leasing Map. South Timbalier Area. South Addition. Louisiana Map No. 6A (Approved September 8, 1959; Revised July 22, 1968).

7. OCS Leasing Map. Grand Isle Area. Louisiana Map No. 7 (Approved June 8, 1954). That portion more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court. June 16, 1975 (U.S. versus Louisiana, 422 US 13).

8. OCS Leasing Map. Grand Isle Area. South Addition. Louisiana Map No. 7A (Approved September 8, 1959; Revised March 7, 1961).

9. OCS Official Protraction Diagram. Ewing Bank NH 15-12 (Approved February 15, 1973; Revised December 2, 1976). That portion that does not include blocks 932, 933, 937, 938, 975, 976, 978, 979, 981, 982.

10. OCS Official Protraction Diagram. Green Canyon NG 15-3 (Approved February 15, 1973; Revised December 2, 1976). That portion east of a north-south line formed by the west line of block 13 at the northwest corner and the west line of block 981 at the southwest corner.

11. OCS Official Protraction Diagram. Walker Ridge NG 15-6 (Approved June 5, 1974; Revised December 2, 1976). That portion east of a north-south line formed by the west line of block 13 at the northwest corner and the west line of block 981 at the southwest corner.

E. *Metairie District*—The U.S. Geological Survey's Metairie District incorporates all, or the indicated portions, of the OCS areas shown on the following official maps:

1. OCS Leasing Map, West Delta Area. Louisiana Map No. 8 (Approved June 8, 1954). That portion more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court, June 16, 1975 (U.S. versus Louisiana, 422 US 13).

2. OCS Leasing Map, West Delta Area. South Addition, Louisiana Map No. 8A (Approved September 8, 1959; Revised November 24, 1961).

3. OCS Leasing Map, South Pass Area. Louisiana Map No. 9 (Approved June 8, 1954; Revised July 22, 1954; Revised May 11, 1973). That portion more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court, June 16, 1975 (U.S. versus Louisiana, 422 US 13).

4. OCS Leasing Map, South Pass Area. South and East Addition, Louisiana Map No. 9A (Approved September 8, 1959).

5. OCS Leasing Map, Breton Sound Area. Louisiana Map No. 10 (Approved June 8, 1954; Revised July 22, 1954). That portion more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court, June 16, 1975 (U.S. versus Louisiana, 422 US 13).

6. OCS Leasing Map, Main Pass Area. Louisiana Map No. 10 (approved June 8, 1954; Revised July 22, 1954). That portion more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court, June 16, 1975 (U.S. versus Louisiana, 422 US 13).

7. OCS Leasing Map, Main Pass Area. South and East Addition, Louisiana Map No. 10A (Approved September 8, 1959).

8. OCS Leasing Map, Chandeleur Area. Louisiana Map No. 11 (Approved June 8, 1954; Revised July 22, 1954). That portion more than three geographical miles seaward from the line described in the supplemental decree of the United States Supreme Court, June 16, 1975 (U.S. versus Louisiana, 422 US 13).

9. OCS Leasing Map. Chandeleur Area. East Addition, Louisiana Map No. 11A (Approved September 8, 1959).

10. OCS Official Protraction Diagram, NG 16-1 (Approved June 5, 1974; Revised December 2, 1976).

11. OCS Official Protraction Diagram. NG 16-2 (Approved December 2, 1976).

12. OCS Official Protraction Diagram. The Elbow NG 16-3 (Approved October 10, 1972; Revised August 1, 1973; Revised December 2, 1976).

13. OCS Official Protraction Diagram. NG 16-4 (Approved December 2, 1976).

14. OCS Official Protraction Diagram. NG 16-5 (Approved December 2, 1976).

15. OCS Official Protraction Diagram. NG 16-6 (Approved June 5, 1974; Revised December 2, 1976).

16. OCS Official Protraction Diagram. St. Petersburg NG 17-1 (Approved October 10, 1972; Revised December 2, 1976).

17. OCS Official Protraction Diagram. Charlotte Harbor NG 17-4 (Approved October 10, 1972; Revised December 2, 1976).

18. OCS Official Protraction Diagram. Mobile NH 16-4 (Approved October 10, 1972; Revised December 21, 1977).

19. OCS Official Protraction Diagram. Pensacola NH 16-5 (Approved October 10, 1972; Revised December 2, 1976).

20. OCS Official Protraction Diagram. Viosca Knoll NH 16-7 (Approved October 10, 1972; Revised February 15, 1973; Revised August 1, 1973; Revised December 2, 1976).

21. OCS Official Protraction Diagram. Destin Dome NH 16-8 (Approved October 10, 1972; Revised August 1, 1973; Revised December 2, 1976).

22. OCS Official Protraction Diagram. Apalachicola NH 16-9 (Approved October 10, 1972; Revised August 1, 1973; Revised January 15, 1976).

23. OCS Official Protraction Diagram. Mississippi Canyon NH 16-10 (Approved February 15, 1973; Revised December 2, 1976).

24. OCS Official Protraction Diagram. De Soto Canyon NH 16-11 (Approved June 5, 1974; Revised December 2, 1976).

25. OCS Official Protraction Diagram. Florida Middle Ground NH 16-12 (Approved October 10, 1972; Revised August 1, 1973; Revised December 2, 1976).

26. OCS Official Protraction Diagram. Gainesville, NH 17-7 (Approved October 10, 1972; Revised December 2, 1976).

27. OCS Official Protraction Diagram. Tarpon Spring NH 17-10 (Approved October 10, 1972; Revised December 2, 1976).

[45 FR 6069, Jan. 24, 1980, as amended at 45 FR 19256, Mar. 25, 1980]

CHAPTER III—INTERNATIONAL REGULATORY AGENCIES (FISHING AND WHALING)

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SUBCHAPTER A—INTERNATIONAL PACIFIC HALIBUT COMMISSION

PART 301—PACIFIC HALIBUT FISHERIES

Sec.

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AUTHORITY: 5 UST 5; TIAS 2900; 16 USC 772–772j.

SOURCE: 46 FR 30345, June 8, 1981, unless otherwise noted.

§ 301.1 Regulatory areas.

(a) "Convention waters" means the waters off the west coasts of the United States and Canada, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which each Party exercises exclusive fisheries jurisdiction as of March 29, 1979. For purposes of this Convention, the "maritime area" in which a Party exercises exclusive fisheries jurisdiction includes without distinction areas within and seaward of the territorial sea or internal waters of that Party. All bearings are magnetic, unless otherwise stated, and all positions are determined by the most recent charts issued by the United States Coast and Geodetic Survey or National Ocean Survey.

(b) Area 2 includes all waters east of a line running north-west one-quarter west (312°) from Cape Spencer Light (latitude 58°11′57″ N., longitude 136°38′18″ W.), and south and east of a line running south one-quarter east (177°) from said light, and is subdivided as follows: Area 2A includes all waters off the coasts of California, Oregon, and Washington in which the United States claims exclusive fisheries jurisdiction; Area 2B includes all waters off the coast of British Columbia in which Canada claims exclusive fisheries jurisdiction; and Area 2C includes all waters off the coast of Alaska, that are south of Cape Spencer, in which the United States claims exclusive fisheries jurisdiction.

(c) Area 3 includes all waters north and west of Area 2 that are east of the meridian of 170° W., excluding the Bering Sea, and is subdivided as follows: Area 3A includes all waters between Area 2 and a line extending from the most northerly point on Cape Aklek (latitude 57°41′15″ N., longitude 155°35′00″ W.,) to Cape Ikolik (latitude 57°17′17″ N., longitude 154°47′18″ W.), then along the Kodiak Island coastline to Cape Trinity (latitude 56°44′50″ N., longitude 154°08′44″ W.), then southeast by east one-quarter east (121°); Area 3B includes all waters between Area 3A and the meridian of 170° W.

(d) Area 4 includes all waters in the Bering Sea and all waters in the Gulf of Alaska west of the meridian of 170° W.

(e) The boundary between Area 3 and 4 is from Cape Kabuch Light (latitude 54°49′00″ N., longitude 163°21′36″ W.) to Cape Sarichef Light (latitude 54°36′00″ N., longitude 164°55′42″ W.), then to a point in Pumicestone Bay on Unalaska Island (latitude 53°31′45″ N., longtitude 166°58′15″ W.), then to Anangula (Ananiuliak) Island Light (latitude 52°59′48″ N., longtitude 168°55′06″ W.), then to the point of intersection with the meridian of 170° W. on Chuginadak Island (latitude 52°49′42″ N., longtitude 170°00′00″ W.); then true south.

§ 301.2 Commercial fishing for halibut.

The regulations and requirements in §§ 301.3 to 301.12 pertain only to commercial fishing. The regulations for sport fishing are listed in § 301.13.

§ 301.3 Fishing seasons.

(a) The fishing seasons for each Regulatory Area are shown in the following table and will apply, providing that the catch limits specified in § 301.6 are not taken earlier.

Regulatory area	Fishing period	Opening date	Closing date
2A	1	June 7	June 21.
	2	July 7	July 21.
	3	Aug. 6	Aug. 20.
	4	Sept. 5	Sept. 19.
2B	1	May 7	May 22.
	2	June 7	June 22.
	3	July 7	July 22.
	4	Aug. 6	Aug. 21.
	5	Sept. 5	Sept. 20.
2C	1	June 7	June 14.
	2	July 12	July 19.
3A	1	June 7	June 20.
	2	July 12	July 25.
	3	Aug. 16	Aug. 29.
	4	Sept. 19	Oct. 2.
3B	1	June 7	June 20.
	2	July 12	July 25.
	3	Aug. 25	Sept. 7.
	4	Sept. 28	Oct. 11.
4	1	June 7	June 22.
	2	July 14	July 29.
	3	Aug. 20	Sept. 4.
	4	Sept. 26	Oct. 11.

(b) Notwithstanding the provisions of paragraph (a), if Area 3A is closed under the provisions of § 301.6 during either the first or second fishing period and prior to attaining the catch limit in Area 3B, Area 3B will close on the same date. Area 3B will reopen on August 25 and continue on the schedule specified in paragraph (a) until the catch limit specified in § 301.6 is attained.

(c) Notwithstanding the provisions of paragraph (a), if Area 3A is closed under the provisions of § 301.6 prior to attaining the catch limit in Area 4, Area 4 will close on the same date. Area 4 will reopen for an additional fishing period 10 days after the closure of Area 3A and remain open until the catch limit specified in § 301.6 is attained, or November 15, whichever is earlier.

(d) Each fishing period shall begin at 1500 hours and terminate at 0600 hours on the designated dates. All hours of opening and closing shall be Pacific Standard Time (see table on last page).

§ 301.4 Closed periods.

(a) All waters shall be closed to commercial halibut fishing except as provided in § 301.3 and the retention and landing of any halibut caught during any closed period is prohibited.

(b) Except as provided in § 301.10(c), these regulations shall not prohibit fishing for species of fish other than halibut during the closed periods, provided that it shall be unlawful for a vessel to have halibut aboard, or for any person to have halibut in his possession while so engaged. Nor shall these regulations prohibit the International Pacific Halibut Commission, hereinafter referred to as "the Commission", from conducting or authorizing fishing operations for research purposes.

§ 301.5 Closed area.

All waters in the Bering Sea (Area 4) that are east of a line from Cape Sarichef Light to a point northeast of St. Paul Island (latitude 57°15′00″ N., longitude 170°00′00″ W.), and south of a line from the latter point to Cape Newenham (latitude 58°39′00″ N., longitude 162°10′25″ W.) are closed to halibut fishing and no person shall fish for halibut therein, or shall have halibut in his possession therein except in the course of a continuous transit across the area.

§ 301.6 Catch limits.

(a) The total allowable catch of halibut to be taken in Area 2 during the halibut fishing periods shall be limited to 9,000,000 pounds (4,082 metric tons). It shall be divided as follows: 200,000 pounds (91 metric tons) of the total allowable catch may be caught in Area 2A; 5,400,000 pounds (2,449 metric tons) of the total allowable catch may be caught in Area 2B; and 3,400,000 pounds (1,542 metric tons) of the total allowable catch may be caught in Area 2C.

(b) The total allowable catch of halibut to be taken in Area 3 during the halibut fishing periods shall be limited to 13,000,000 pounds (5,897 metric tons). It shall be divided as follows:

11,000,000 pounds (4,990 metric tons) of the total allowable catch may be caught in Area 3A; 2,000,000 pounds (907 metric tons) of the total allowable catch may be caught in Area 3B.

(c) The total allowable catch of halibut to be taken in Area 4 during the halibut fishing periods shall be limited to 1,000,000 pounds (454 metric tons).

(d) The Commission will determine and announce the dates on which the catch limits will be attained in each area. Fishing for halibut in the area will be prohibited after that date.

§ 301.7 Size limits.

(a) No person, firm, or corporation shall take or have in possession any halibut that with head on is less than 32 inches (81.3 centimeters) as measured in a straight line, passing over the pectoral fin, from the tip of the lower jaw with mouth closed, to the extreme end of the middle of the tail. If the head has been removed, a size limit of not less than 24 inches (61.0 centimeters) as measured from the base of the pectoral fin, at its most anterior point, to the extreme end of the middle of the tail shall apply (see illustration on back page).

(b) It is unlawful for any person while on a fishing vessel and engaged in commercial fishing to mutilate or otherwise disfigure a halibut in any manner which prevents determining the minimum size set forth in paragraph (a) of this section.

§ 301.8 Licensing of vessels.

(a) All vessels 5 net tons or over that fish for halibut with setline gear must be licensed by the Commission. Vessels of less than 5 net tons or vessels which use hook and line gear other than setlines do not need a Commission license. The Commission's license requirements do not obviate licensing requirements of State or Federal Governments.

(b) The halibut license must be carried on the vessel at all times and shall be subject to inspection by customs and fishery officers of the Governments of Canada or the United States, hereinafter referred to as "the Governments" or by representatives of the Commission.

(c) The halibut license shall be issued without fee by customs or fishery officers of the Governments or by representatives of the Commission. Halibut licenses need not be renewed except that a new license is required for a vessel that is sold, transferred, renamed, or redocumented.

(d) The captain or operator of any vessel licensed under these regulations that shall fish for halibut in Area 4 must obtain a vessel clearance which must be validated both prior to such fishing and prior to unloading any halibut. This vessel clearance and validation shall be obtained at Dutch Harbor, Alaska, from United States customs officers, or from fishery officers if there are no United States customs officers. This regulation does not apply to fishermen who are resident in Area 4, and who unload all of their catches at ports within Area 4.

(e) A halibut license shall not be valid for halibut fishing nor for possession of halibut in any area closed to halibut fishing except while in transit to an area open to halibut fishing, or to or within a port of sale. The license shall be invalid for the possession of halibut if the licensed vessel is fishing or attempting to fish for any species of fish in any area closed to halibut fishing.

(f) Any vessel which is not required to be licensed for halibut fishing under paragraph (a) shall not possess any halibut of any origin in any area closed to halibut fishing except while in actual transit to or within a port of sale.

(g) No person on any vessel required to be licensed under subsection (a) shall fish for halibut or have halibut in his possession, unless said vessel has a valid license issued in conformity with the provisions of this section.

(h) The captain or operator of any vessel holding a license under these regulations shall keep an accurate log of all fishing operations including date, locality, amount of gear used, and amount of halibut taken daily in each such locality. This log record shall be retained for a period of two years and shall be open to inspection by authorized representatives of the Commission.

(i) The captain, operator, or any other person engaged on shares in the operation of any vessel licensed under these regulations may be required by the Commission or by any officer of the Governments to certify to the correctness of such log record to the best of his information and belief and to support the certificate by a sworn statement.

§ 301.9 Requirements for halibut processors.

(a) All persons, firms, or corporations that buy halibut or receive halibut from fishing or transporting vessels or other carrier, shall keep records of each purchase or receipt of halibut, showing date, locality (statistical area), name of vessel, person, firm, or corporation purchased or received from, and the amount in pounds according to trade categories of the halibut.

(b) These records shall be retained for a period of two years and shall be open to inspection by officers of the Governments or by any authorized representative of the Commission. Such persons, firms or corporations may be required to certify to the correctness of such records and to support the certificate by a sworn statement.

(c) The possession of halibut known to have been taken in contravention of these regulations is prohibited.

§ 301.10 Fishing gear.

(a) Halibut are to be taken only with hook and line gear. The retention or possession of halibut taken with any other gear, such as nets or pots, is prohibited.

(b) The retention or possession of halibut is prohibited when any commercial fishing gear other than hook and line gear or nets used solely for the capture of bait are on board.

(c) No person or vessel that has deployed any longline fishing gear in any area of convention waters during the 72 hours immediately preceding the opening of any applicable halibut fishing period shall catch, retain, or possess halibut in convention waters prior to the opening of the succeeding halibut fishing period.

§ 301.11 Retention of tagged halibut.

Nothing contained in these regulations shall prohibit any vessel at any time from retaining and landing a halibut which bears a Commission tag at the time of capture, provided that the halibut with the tag still attached is reported at the time of landing and made available for examinations by representatives of the Commission or by officers of the State, Provincial, or Federal Governments.

§ 301.12 Supervision of unloading and weighing.

The unloading and weighing of halibut may be subject to the supervision of customs or other authorized officers to assure the fulfillment of the provisions of these regulations.

§ 301.13 Sport fishing for halibut.

(a) Sport fishing is permitted from March 1 to October 31, and may be conducted with no more than two hooks attached to a handline or rod, or by spear. Not more than two halibut of any size per person per day shall be caught, possessed, or landed from a vessel that is engaged in sport fishing. After two halibut have been taken by any person, those halibut shall be landed before that person takes more halibut on any succeeding day.

(b) No sport-caught halibut shall be possessed aboard a vessel when the fish or shellfish aboard said vessel are destined for commercial use (sale, trade, or barter).

§ 301.14 Previous regulations superseded.

These regulations shall supersede all previous regulations of the Commission. These regulations shall be effective each succeeding year, until superseded.

SUBCHAPTER B—INTERNATIONAL WHALING COMMISSION

PART 351—WHALING

Subpart A—Interpretation

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APPENDIX A

AUTHORITY: Article 5, 62 Stat. 1718, sec. 2-14, 64 Stat. 421-425; 16 U.S.C. 916 et seq.

SOURCE: 45 FR 85031, Dec. 24, 1980, unless otherwise noted.

Subpart A—Interpretation

§ 351.1 Definitions.

The following expressions have the meanings respectively assigned to them, that is to say:

Baleen whales

(a) "Baleen whale" means any whale which has baleen or whale bone in the mouth, i.e. any whale other than a toothed whale.

(b) "Blue whale" (*Balaenoptera musculus*) means any whale known as blue whale, Sibbald's rorqual, or sulphur bottom, and including pygmy blue whale.

(c) "Bowhead whale" (*Balaena mysticetus*) means any whale known as bowhead, Arctic right whale, great polar whale, Greenland right whale, Greenland whale.

(d) "Bryde's whale" (*Balaenoptera edeni, B. brydei*) means any whale known as Bryde's whale.

(e) "Fin whale" (*Balaenoptera physalus*) means any whale known as common finback, common rorqual, fin whale, herring whale, or true fin whale.

(f) "Gray whale" (*Eschrichtius robustus*) means any whale known as gray whale, California gray, devil fish, hard head, mussel digger, gray back, or rip sack.

(g) "Humpback whale" (*Megaptera novaeangliae*) means any whale known as bunch, humpback, humpback whale, humpbacked whale, hump whale or hunchback whale.

(h) "Minke whale" (*Balaenoptera acutorostrata, B. bonaerensis*) means any whale known as lesser rorqual, little piked whale, minke whale, pike-headed whale or sharp headed finner.

(i) "Pygmy right whale" (*Caperea marginata*) means any whale known as southern pygmy right whale, pygmy right whale.

(j) "Right whale" (*Eubalaena glacialis, E. australis*) means any whale known as Atlantic right whale, Arctic right whale, Biscayan right whale, Nordkaper, North Atlantic right whale, North Cape whale, Pacific right whale, or southern right whale.

(k) "Sei whale" (*Balaenoptera borealis*) means any whale known as sei whale, Rudolphi's rorqual, pollack whale, or coalfish whale.

Toothed whales

(a) "Toothed whale" means any whale which has teeth in the jaws.

(b) "Beaked whale" means any whale belonging to the genus *Mesoplodon*, or any whale known as Cuvier's beaked whale (*Ziphius cavirostris*), or Shepherd's beaked whale (*Tasmacetus shepherdi*).

(c) "Bottlenose whale" means any whale known as Baird's beaked whale (*Berardius bairdii*), Arnoux's whale (*Berardius arnuxii*), southern bottlenose whale (*Hyperoodon planifrons*), or northern bottlenose whale (*Hyperoodon ampullatus*).

(d) "Killer whale" (*Orcinus orca*) means any whale known as killer whale or orca.

(e) "Pilot whale" means any whale known as long-finned pilot whale (*Globicephala melaena*) or short-finned pilot whale. (*G. macrorhynchus.*)

(f) "Sperm whale" (*Physeter macrocephalus*) means any whale known as sperm whale, spermacet whale, cachalot or pot whale.

General

(a) "Strike" means to penetrate with a weapon used for whaling.

(b) "Take" means to flag, buoy or make fast to a whale catcher.

(c) "Land" means to retrieve to a factory ship, land station, or other place where a whale can be treated.

(d) "Lose" means to either strike or take but not land.

(e) "Dauhval" means any unclaimed dead whale found floating.

(f) "Lactating whale" means (1) with respect to baleen whales—a female which has any milk present in a mammary gland, (2) with respect to sperm whales—a female which has milk present in a mammary gland the maximum thickness (depth) of which is 10 cm or more. This measurement shall be at the mid ventral point of the mammary gland perpendicular to the body axis, and shall be logged to the nearest centimetre; that is to say, any gland between 9.5 cm and 10.5 cm shall be logged as 10 cm. The measurement of any gland which falls on an exact 0.5 centimetre shall be logged at the next 0.5 centimetre, eg 10.5 cm shall be logged as 11.0 cm.

However, notwithstanding these criteria, a whale shall not be considered a lactating whale if scientific (histological or other biological) evidence is presented to the appropriate national authority establishing that the whale could not at that point in its physical cycle have had a calf dependent on it for milk.

(g) "Small-type whaling" means catching operations using powered vessels with mounted harpoon guns hunting exclusively for minke, bottlenose, beaked, pilot or killer whales.

Subpart B—Seasons

§ 351.21 Use of factory ships and whale catchers.

(a) It is forbidden to use a factory ship or whale catcher attached thereto for the purpose of taking or treating baleen whales except minke whales, in any waters south of 40° South Latitude, except during the period from 12th December to 7th April following, both days inclusive.

(b) It is forbidden to use a factory ship or whale catcher attached thereto for the purpose of taking or treating sperm or minke whales, except as permitted by the Contracting Governments in accordance with paragraphs (c) and (d) of this section, and § 351.23.

(c) Each Contracting Government shall declare for all factory ships and whale catchers attached thereto under its jurisdiction, an open season or seasons not to exceed eight months out of any period of twelve months during which the taking or killing of sperm whales by whale catchers may be permitted; provided that a separate open season may be declared for each factory ship and the whale catchers attached thereto.

(d) Each Contracting Government shall declare for all factory ships and whale catchers attached thereto under its jurisdiction one continuous open season not to exceed six months out of any period of twelve months during which the taking or killing of minke whales by the whale catchers may be permitted provided that:

(1) A separate open season may be declared for each factory ship and the whale catchers attached thereto;

(2) The open season need not necessarily include the whole or any part of the period declared for other baleen whales pursuant to paragraph (a) of this section.

(e) It is forbidden to use a factory ship which has been used during a season in any waters south of 40° South Latitude for the purpose of treating baleen whales, except minke whales, in any other area except the North Pacific Ocean and its dependent waters north of the Equator for the same purpose within a period of one year from the termination of that season; provided that catch limits in the North Pacific Ocean and dependent waters are established as provided in § 351.35(b) and § 351.39(b) of this part and provided that this section shall not apply to a ship which has been used during the season solely for freezing or salting the meat and entrails of whales intended for human food or feeding animals.

§ 351.22 Use of land stations and whale catchers.

(a) It is forbidden to use a whale catcher attached to a land station for the purpose of killing or attempting to kill baleen and sperm whales except as permitted by the Contracting Government in accordance with paragraphs (b), (c) and (d) of this section.

(b) Each Contracting Government shall declare for all land stations under its jurisdiction, and whale catchers attached to such land stations, one open season during which the taking or killing of baleen whales, except minke whales, by the whale catchers shall be permitted. Such open season shall be for a period of not more than six consecutive months in any period of twelve months and shall apply to all land stations under the jurisdiction of the Contracting Government; provided that a separate open season may be declared for any land station used for the taking or treating of baleen whales, except minke whales, which is more than 1,000 miles from the nearest land station used for the taking or treating of baleen whales, except minke whales, under the jurisdiction of the same Contracting Government.

(c) Each Contracting Government shall declare for all land stations under its jurisdiction and for whale catchers attached to such land stations, one open season not to exceed eight continuous months in any one period of twelve months, during which the taking or killing of sperm whales by the whale catchers shall be permitted, provided that a separate open season may be declared for any land station used for the taking or treating of sperm whales which is more than 1,000 miles from the nearest land station used for the taking or treating of sperm whales under the jurisdiction of the same Contracting Government.

(d) Each Contracting Government shall declare for all land stations under its jurisdiction and for whale catchers attached to such land stations one open season not to exceed six continuous months in any period of twelve months during which the taking or killing of minke whales by the whale catchers shall be permitted (such period not being necessarily concurrent with the period declared for other baleen whales, as provided for in paragraph (b) of this section); provided that a separate open season may be declared for any land station used for the taking or treating of minke whales which is more than 1,000 miles from the nearest land station used for the taking or treating of minke whales under the jurisdiction of the same Contracting Government. Except that a separate open season may be declared for any land station used for the taking or treating of minke whales which is located in an area having oceanographic conditions clearly distinguishable from those of the area in which are located the other land stations used for the taking or treating of minke whales under the jurisdiction of the same Contracting Government; but the declaration of a separate open season by virtue of the provisions of this paragraph shall not cause thereby the period of time covering the open seasons declared by the same Contracting Government to exceed nine continuous months of any twelve months.

(e) The prohibitions contained in this section shall apply to all land stations as defined in Article II of the Whaling Convention of 1946.

§ 351.23 Other operations.

Each Contracting Government shall declare for all whale catchers under its jurisdiction not operating in conjunction with a factory ship or land station one continuous open season not to exceed six months out of any period of twelve months during which the taking or killing of minke whales by such whale catchers may be permitted. Notwithstanding this section one continuous open season not to exceed nine months may be implemented so far as Greenland is concerned.

Subpart C—Capture

§ 351.30 [Reserved]

§ 351.31 Indian Ocean sanctuary.

In accordance with Article V(1)(c) of the Convention, commercial whaling, whether by pelagic operations or from land stations, is prohibited in a region designated as the Indian Ocean Sanctuary. This comprises the waters of the Northern Hemisphere from the coast of Africa to 100 degrees East, including the Red and Arabian Seas and the Gulf of Oman; and the waters of the Southern Hemisphere in the sector from 20 degrees East to 130 degrees East, with the Southern boundary set at 55 degrees South. This prohibition applies irrespective of the classifications of baleen or toothed whale stocks in the Sanctuary, as may from time to time be determined by the Commission. This prohibition will apply for ten years from 24 October 1979 with the provision for a general review after five years, unless the Commission decides otherwise.

§ 351.32 Area limits for factory ships.

It is forbidden to use a factory ship or whale catcher attached thereto, for the purpose of taking or treating baleen whales, except minke whales, in any of the following areas:

(a) In the waters north of 66° North Latitude, except that from 150° East Longitude eastwards as far as 140° West Longitude, the taking or killing of baleen whales by a factory ship or whale catcher shall be permitted between 66° North Latitude and 72° North Latitude;

(b) In the Atlantic Ocean and its dependent waters north of 40° South Latitude;

(c) In the Pacific Ocean and its dependent waters east of 150° West Longitude between 40° South Latitude and 35° North Latitude;

(d) In the Pacific Ocean and its dependent waters west of 150° West Longitude between 40° South Latitude and 20° North Latitude;

(e) In the Indian Ocean and its dependent waters north of 40° South Latitude.

§ 351.33 Classification of areas and divisions.

(a) Classification of areas. Areas relating to Southern Hemisphere baleen whales except Bryde's whales are those waters between the ice-edge and the Equator and between the meridians of longitude listed in Table 1.

(b) Classification of divisions.

Divisions relating to Southern Hemisphere sperm whales are those waters between the ice-edge and the Equator and between the meridians of longitude listed in Table 3.

(c) Geographical boundaries in the North Atlantic.

The geographical boundaries for the fin, minke and sei whale stocks in the North Atlantic are:

Fin whale stocks

Nova Scotia, South and West of a line through: 47° N 54° W, 46° N 54°30′ W, 46° N 42° W, 20° N 42° W.

Newfoundland—Labrador, West of a line through: 75° N 73°30′ W, 69° N 59° W, 61° N 59° W, 52°20′ N 42° W, 46° N 42° W and North of a line through: 46° N 42° W, 46° N 54°30′ w, 47° N 54° W.

West Greenland, East of a line through: 75° N 73°30′ W, 69° N 59° W, 61° N 59° W, 52°20′ N 42° W, and West of a line through: 52°20′ N 42° W, 59° N 42° W, 59° N 44° W, Kap Farvel.

East Greenland—Iceland, East of a line through: Kap Farvel (South Greenland), 59° N 44° W, 59° N 42° W, 20° N 42° W and West of a line through: 20° N 18° W, 60° N

18° W, 68° N 3° E, 74° N 3° E, and South of 74° N latitude.

North Norway, North and East of a line through: 74° N 22° W, 74° N 3° E, 68° N 3° E, 67° N 0°, 67° N 14° E.

West Norway and Faroe Islands, South of a line through: 67° N 14° E, 67° N 0°, 60° N 18° W, and North of a line through: 61° N 16° W, 61° N 0°, Thyboron (western entrance to Limfjorden, Denmark).

British Isles—Spain and Portugal, South of a line through: Thyboron (Denmark), 61° N 0°, 61° N 16° W, and East of a line through: 63° N 11° W, 60° N 18° W, 22° N 18° W.

Minke whale stocks

Canadian East Coast, West of a line through: 75° N 73°30′ W, 69° N 59° W, 61° N 59° W, 52°20′ N 42° W, 20° N 42° W.

West Greenland, East of a line through: 75° N 73°30′ W, 69° N 59° W, 61° N 59° W, 52°20′ N 42° W, and West of a line through: 52°20′ N 42° W, 59° N 42° W, 59° N 44° W, Kap Farvel.

Central, East of a line through: Kap Farvel (South Greenland), 59° N 44° W, 59° N 42° W, 20° N 42° W, and West of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and South of 74° N latitude.

Northeastern, East of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and North of a line through: 74° N 3° E, 74° N 22° W.

Sei whale stocks

Nova Scotia, South and West of a line through: 47° N 54° W, 46° N 54°30′ W, 46° N 42° W, 20° N 42° W.

Iceland—Denmark Strait, East of a line through: Kap Farvel (South Greenland), 59° N 44° W, 59° N 42° W, 20° N 42° W, and West of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and South of 74° N latitude.

Eastern, East of a line through: 20°N 18°W, 60°N 18°W, 68°N 3°,E 74°N 30°E and North of a line through: 74°N 3°E, 74°N 22°W.

(d) Geographical boundaries in the North Pacific.

The geographical boundaries for the sperm and Bryde's whale stocks in the North Pacific are:

Sperm whale stocks

Western Division

West of a line from the ice-edge south along the 180° meridian of longitude to 180°, 50°N, then east along the 50°N parallel of latitude to 160°W, 50°N, then south along the 160°W meridian of longitude to 160°W, 40°N, then east along the 40°N parallel of latitude to 150°W, 40°N, then south along the 150°W meridian of longitude to the Equator.

Eastern Division

East of the line described above.

Bryde's whale stocks

Western Stock

West of the 160°W meridian of longitude.

Eastern Stock

East of the 160°W meridian of longitude.

(e) Geographical boundaries for Bryde's whale stocks in the Southern Hemisphere and Northern Indian Ocean.

Indian Ocean, 20°E to the Australian coast, 40°S to the coast north of the Equator.

Solomon Islands, 150°E to 170°E, 20°S to 10°S.

Western South Pacific, Australian coast to 150°W, 40°S to the Equator (excluding the Solomon Islands stock area).

Peruvian, 110°W to the South American coast, 10°S to 10°N.

Eastern South Pacific, 150°W to the South American coast, 40°S to the Equator (excluding the Peruvian stock area).

§ 351.34 Classification of stocks.

All stocks of whales shall be classified in one of three categories according to the advice of the Scientific Committee as follows:

(a) A Sustained Management Stock (SMS) is a stock which is not more than 10 per cent of Maximum Sustainable Yield (hereinafter referred to as MSY) stock level below MSY stock level, and not more than 20 per cent above that level; MSY being determined on the basis of the number of whales.

(1) When a stock has remained at a stable level for a considerable period under a regime of approximately constant catches, it shall be classified as a Sustained Management Stock in the absence of any positive evidence that it should be otherwise classified.

(2) Commercial whaling shall be permitted on Sustained Management Stocks according to the advice of the Scientific Committee. These stocks are listed in Tables 1, 2, and 3 of this part.

(3) For stocks at or above the MSY stock level, the permitted catch shall not exceed 90 per cent of the MSY. For stocks between the MSY stock level and 10 per cent below that level, the permitted catch shall not exceed

the number of whales obtained by taking 90 per cent of the MSY and reducing that number by 10 per cent for every 1 per cent by which the stock falls short of the MSY stock level.

(b) An Initial Management Stock (IMS) is a stock more than 20 per cent of MSY stock level above MSY stock level. Commercial whaling shall be permitted on Initial Management Stocks according to the advice of the Scientific Committee as to measures necessary to bring the stocks to the MSY stock level and then optimum level in an efficient manner and without risk of reducing them below this level. The permitted catch for such stocks will not be more than 90 per cent of MSY as far as this is known, or, where it will be more appropriate, catching effort shall be limited to that which will take 90 per cent of MSY in a stock at MSY stock level.

(1) In the absence of any positive evidence that a continuing higher percentage will not reduce the stock below the MSY stock level no more than 5 per cent of the estimated initial exploitable stock shall be taken in any one year. Exploitation should not commence until an estimate of stock size has been obtained which is satisfactory in the view of the Scientific Committee. Stocks classified as Initial Management Stock are listed in Tables 1, 2, and 3 of this part.

(c) A Protection Stock (PS) is a stock which is below 10 per cent of MSY stock level below MSY stock level.

(1) There shall be no commercial whaling on Protection Stocks. Stocks so classified are listed in Tables 1, 2, and 3 of this part.

(d) Notwithstanding the other provisions of § 351.34, there shall be a moratorium on the taking, killing, or treating of whales, excluding minke whales, by factory ships or whale catchers attached to factory ships. This moratorium applies to sperm whales, killer whales and baleen whales, excluding minke whales.

§ 351.35 Catch limits for baleen whales.

(a) The number of baleen whales taken in the Southern Hemisphere in the 1980/81 pelagic season and the 1981 coastal season shall not exceed the limits shown in Tables 1 and 2. However, in no circumstances shall the sum of the Area catches exceed the total catch limits for each species.

(b) The number of baleen whales taken in the North Pacific Ocean and dependent waters in 1981 and in the North Atlantic Ocean in 1981 shall not exceed the limits shown in Tables 1 and 2.

§ 351.36 Limitations on the taking of humpback, gray, and bowhead whales.

(a) Notwithstanding the provisions of § 351.34:

(1) The taking of 10 humpback whales not below 35 feet (10.7 metres) in length, per year is permitted in Greenland waters provided that whale catchers of less than 50 gross register tonnage are used for this purpose.

(2) The taking of bowhead whales from the Bering Sea stock by aborigines is permitted, but only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines, and further provided that:

(i) For the years 1981 through 1983, inclusive, the total number of whales landed shall not exceed 45 and the total number of whales struck shall not exceed 65, provided, however, that in any one year the number of whales landed shall not exceed 17,

(ii) It is forbidden to strike, take or kill calves or any bowhead whale accompanied by a calf.

(b) The taking of gray whales from the Eastern stock in the North Pacific is permitted, but only by aborigines or a Contracting Government on behalf of aborigines, and then only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines. The number of gray whales taken in accordance with this paragraph in 1981 shall not exceed the limit shown in Table 1.

§ 351.37 Taking of calves or suckling whales prohibited.

It is forbidden to take or kill suckling calves or female whales accompanied by calves.

§ 351.38 Size limits for sei, Bryde's and fin whales.

(a) It is forbidden to take or kill any sei or Bryde's whales below 40 feet (12.2 metres) in length except that sei and Bryde's whales of not less than 35 feet (10.7 metres) may be taken for delivery to land stations, provided that, the meat of such whales is to be used for local consumption as human or animal food.

(b) It is forbidden to take or kill any fin whales below 57 feet (17.4 metres) in length in the Southern Hemisphere, and it is forbidden to take or kill fin whales below 55 feet (16.8 metres) in the Northern Hemisphere; except that fin whales of not less than 55 feet (16.8 metres) may be taken in the Southern Hemisphere for delivery to land stations and fin whales of not less than 50 feet (15.2 metres) may be taken in the Northern Hemisphere for delivery to land stations, provided that, in each case the meat of such whales is to be used for local consumption as human or animal food.

§ 351.39 Catch limits for sperm whales.

(a) The number of sperm whales taken in the Southern Hemisphere in the 1980/81 pelagic season and the 1981 coastal season shall not exceed the limits shown in Table 3.

(b) The number of sperm whales taken in the North Pacific Ocean and dependent waters in 1981 and in the North Atlantic Ocean in 1981 shall not exceed the limits shown in Table 3.

§ 351.40 Size limits for sperm whales.

(a) It is forbidden to take or kill any sperm whales below 30 feet (9.2 metres) in length except in the North Atlantic Ocean where it is forbidden to take or kill any sperm whales below 35 feet (10.7 metres).

(b) It is forbidden to take or kill any sperm whale over 45 feet (13.7 metres) in length in the Southern Hemisphere north of 40° South Latitude during the months of October to January inclusive.

(c) It is forbidden to take or kill any sperm whale over 45 feet (13.7 metres) in length in the North Pacific Ocean and dependent waters south of 40° North Latitude during the months of March to June inclusive.

Subpart D—Treatment

§ 351.51 Processing of whales.

(a) It is forbidden to use a factory ship or a land station for the purpose of treating any whales which are classified as Protection Stocks in § 351.34 or are taken in contravention of §§ 351.21, 351.22, 351.23, 351.30, 351.31, 351.32, 351.35, and 351.39 of this part, whether or not taken by whale catchers under the jurisdiction of a Contracting Government.

(b) All other whales taken, except minke whales, shall be delivered to the factory ship or land station and all parts of such whales shall be processed by boiling or otherwise, except the internal organs, whale bone and flippers of all whales, the meat of sperm whales and of parts of whales intended for human food or feeding animals. A Contracting Government may in less developed regions exceptionally permit treating of whales without use of land stations, provided that such whales are fully utilized in accordance with this section.

(c) Complete treatment of the carcases of "dauhval" and of whales used as fenders will not be required in cases where the meat or bone of such whales is in bad condition.

§ 351.52 Regulation of processing.

(a) The taking of whales for treatment by a factory ship shall be so regulated or restricted by the master or person in charge of the factory ship that no whale carcase (except of a whale used as a fender, which shall be processed as soon as is reasonably practicable) shall remain in the sea for a longer period than thirty-three hours from the time of killing to the time when it is hauled up for treatment.

(b) Whales taken by all whale catchers, whether for factory ships or land stations, shall be clearly marked so as to identify the catcher and to indicate the order of catching.

TABLE 1—BALEEN WHALE STOCK CLASSIFICATIONS AND CATCH LIMITS (EXCLUDING BRYDE'S WHALES)

Southern Hemisphere—1980/81 pelagic season and 1981 coastal season

Area	Longitudes	Sei		Minke		Fin		Blue Classification	Humpback Classification	Right Bowhead, Pygmy Classification	Gray	
		Classification	Catch limit	Classification	Catch limit	Classification	Catch limit				Classification	Catch limit
I	120°W-60°W.	PS	0	—	910	PS	0	PS	PS	PS	—	—
II	60°W-0°W.	PS	0	—	1,176	PS	0	PS	PS	PS	—	—
III	0°-70°E.	PS	0	—	1,237	PS	0	PS	PS	PS	—	—
IV	70°E-130°E.	PS	0	—	2,386	PS	0	PS	PS	PS	—	—
V	130°E-170°W.	PS	0	—	1,250	PS	0	PS	PS	PS	—	—
VI	170W°-120°W.	PS	0	—	467	PS	0	PS	PS	PS	—	—
Total catch not to exceed.		—	0	—	7,072	—	0	0	0	0	—	—
NORTHERN HEMISPHERE—1981 season												
ARCTIC		—	—	—	—	—	—	—	—	—	PS	—
NORTH PACIFIC												
Whole region		PS	0	—	—	PS	0	PS	PS	PS	—	—
Okhotsk Sea-West Pacific Stock.		—	—	SMS	[1] 421	—	—	—	—	—	—	—
Sea of Japan-Yellow Sea-East China Stock.		—	—	[2] SMS	[3] 940	—	—	—	—	—	—	—
Remainder		—	—	IMS	[4] 0	—	—	—	—	—	—	—
Eastern Stock		—	—	—	—	—	—	—	—	—	SMS	[5] 179
Western Stock		—	—	—	—	—	—	—	—	—	PS	0
NORTH ATLANTIC												
Whole region		—	—	—	—	—	—	PS	PS	PS	—	—
West Greenland Stock.		—	—	SMS	[6] 444	[2] SMS	6	—	—	—	—	—
Newfoundland-Labrador Stock.		—	—	—	—	IMS	90	—	—	—	—	—
Canadian East Coast Stock.		—	—	—	[7] 0	—	—	—	—	—	—	—
Nova Scotia Stock.		PS	0	—	—	PS	0	—	—	—	—	—
Central Stock		—	—	SMS	320	—	—	—	—	—	—	—
East Greenland-Iceland Stock.		—	—	—	—	SMS	[8] 304	—	—	—	—	—
Iceland-Denmark Strait Stock.		SMS	[9] 100	—	—	—	—	—	—	—	—	—
Spain-Portugal-British Isles Stock.		—	—	—	—	SMS	[10] 240	—	—	—	—	—
Northeastern Stock.		—	—	SMS	1,790	—	—	—	—	—	—	—
West Norway-Faroe Islands Stock.		—	—	—	—	PS	0	—	—	—	—	—
North Norway Stock.		—	—	—	—	SMS	61	—	—	—	—	—
Eastern Stock		—	0	—	—	—	—	—	—	—	—	—
NORTHERN INDIAN OCEAN.		—	—	—	—	—	—	PS	PS	PS	—	—

[1] The total catch of minke whales shall not exceed 1,678 in the five years 1980 to 1984 inclusive.
[2] Provisionally listed as SMS for 1981.
[3] The total catch of minke whales shall not exceed 3,634 in the five years 1980 to 1974 inclusive.
[4] Pending a satisfactory estimate of stock size.
[5] Available to be taken by aborigines or a Contracting Government on behalf of aborigines pursuant to paragraph 13b.
[6] The total catch of minke whales shall not exceed 1,778 in the five years 1981 to 1985 inclusive.
[7] Pending submission of data leading to an adequate assessment.
[8] The total catch of fin whales shall not exceed 1,524 in the six years 1977 to 1982 inclusive.
[9] The total catch of sei whales shall not exceed 504 in the six years 1980 to 1985 inclusive.
[10] The total catch of fin whales shall not exceed 440 in the two years 1980 and 1981.

TABLE 2—BRYDE'S WHALE STOCK CLASSIFICATION AND CATCH LIMITS

[Southern Hemisphere and Northern Indian Ocean 1980-81 pelagic season and 1981 coastal season]

	Classification	Catch limit
South Atlantic stock	IMS	0
Indian Ocean stock	IMS	197
Solomon Islands stock	IMS	0
Western South Pacific stock	IMS	237
Peruvian stock	SMS	264
Eastern South Pacific stock	IMS	188
North Pacific—1981 season:		
Eastern stock	IMS	[1]0
Western stock	SMS	510
East China Sea stock	SMS[2]	19
North Atlantic—1981 season	IMS	[1]0

[1] Pending a satisfactory estimate of stock size.
[2] Provisionally listed as SMS for 1981.

TABLE 3—TOOTHED WHALE STOCK CLASSIFICATION AND CATCH LIMITS

[Southern Hemisphere 1980-81 pelagic season and 1981 coastal season]

Divisions	Longitudes	Sperm		Bottlenose classification
		Classification	Catch limit	
1	60°W- 30°W	—	—	—
2	30°W- 20°E	—	—	—
3	20°E- 60°E	—	—	—
4	60°E- 90°E	—	—	—
5	90°E-130°E	—	—	—
6	130°E-160°E	—	—	—
7	160°E-170°W	—	—	—
8	170°W-100°W	—	—	—
9	100°W- 60°W	—	[1]300	—
[Northern Hemisphere—1981 season]				
North Pacific	—	—	—	—
Western				
Division	—	—	—	—
Males	—	—	[2] [3]890	—
Females	—	—	0	—
Eastern				
Division	—	—	—	—
Males	—	—	0	—
Females	—	—	0	—
North				
Atlantic	—	—	—	—
Males	—	—	130	[4]PS
Females	—	—	—	[4]PS
Northern Indian Ocean	—	—	0	—

[1] The catch in 1982 shall be zero.
[2] Included within this figure there may be a by-catch of females not to exceed 11.5% and all whaling operations for this species are to cease when the by-catch is reached.
[3] It is forbidden to take or kill any sperm whale from this stock over 45 feet (13.7 metres) in length in the 1981 season.
[4] Provisionally listed as PS for 1981 pending the accumulation of sufficient information for classification.

Subpart E—Supervision and Control

§ 351.61 Inspection.

(a) There shall be maintained on each factory ship at least two inspectors of whaling for the purpose of maintaining twenty-four-hour inspection provided that at least one such inspector shall be maintained on each catcher functioning as a factory ship. These inspectors shall be appointed and paid by the Government having jurisdiction over the factory ship; provided that inspectors need not be appointed to ships which, apart from the storage of products, are used during the season solely for freezing or salting the meat and entrails of whales intended for human food or feeding animals.

(b) Adequate inpsection shall be maintained at each land station. The inspectors serving at each land station shall be appointed and paid by the Government having jurisdiction over the land station.

(c) There shall be received such observers as the member countries may arrange to place on factory ships and land stations or groups of land stations of other member countries: The observers shall be appointed by the Commisson acting through its Secretary and paid by the Government nominating them.

§ 351.62 Remuneration of employees.

Gunners and crews of factory ships, land stations, and whale catchers, shall be engaged on such terms that their remuneration shall depend to a considerable extent upon such factors as the species, size and yield of whales taken and not merely upon the number of the whales taken. No bonus or other remuneration shall be paid to the gunners or crews of whale catchers in respect of the taking of lactating whales.

§ 351.63 Measurement of whales.

(a) Whales must be measured when at rest on deck or platform after the hauling out wire and grasping device have been released, by means of a tape-measure made of a non-stretching material. The zero end of the tape-measure shall be attached to a spike or stable device to be positioned on the deck or platform abreast of one end of the whale. Alternatively the spike may be stuck into the tail fluke abreast of the apex of the notch. The tape-measure shall be held taut in a straight line parallel to the deck and the whale's body, and other than in exceptional circumstances along the whale's back, and read abreast of the other end of the whale. The ends of the whale for measurement purposes shall be the tip of the upper jaw, or in sperm whales the most forward part of the head, and the apex of the notch between the tail flukes.

(b) Measurements shall be logged to the nearest foot or 0.1 metres. That is to say, any whale between 75 feet 6 inches and 76 feet 6 inches shall be logged as 76 feet, and any whale between 76 feet 6 inches and 77 feet 6 inches shall be logged as 77 feet. Similarly, any whale between 10.15 metres and 10.25 metres shall be logged as 10.2 metres, and any whale between 10.25 metres and 10.35 metres shall be logged as 10.3 metres. The measurement of any whale which falls on an exact half foot or 0.05 metre shall be logged at the next half foot or 0.05 metre, e.g. 76 feet 6 inches precisely shall be logged as 77 feet and 10.25 metres precisely shall be logged as 10.3 metres.

Subpart F—Information Required

§ 351.71 Reports and records.

(a) All whale catchers operating in conjunction with a factory ship shall report by radio to the factory ship:

(1) The time when each whale is taken;

(2) Its species; and

(3) Its marking effected pursuant to § 351.52(b).

(b) The information specified in paragraph (a) of this section shall be entered immediately by a factory ship in a permanent record which shall be available at all times for examination by the whaling inspectors; and in addition there shall be entered in such permanent record the following information as soon as it becomes available:

(1) Time of hauling up for treatment,

(2) Length, measured pursuant to § 351.63,

(3) Sex,

(4) If female, whether lactating,

(5) Length and sex of foetus, if present, and

(6) A full explanation of each infraction.

(c) A record similar to that described in paragraph (b) of this section shall be maintained by land stations, and all of the information mentioned in the said paragraph shall be entered therein as soon as available.

(d) A record similar to that described in paragraph (b) of this section shall be maintained by "small-type whaling" operations conducted from shore or by pelagic fleets, and all of this information mentioned in the said paragraph shall be entered therein as soon as available.

(e) All Contracting Governments shall report to the Commission for all whale catchers operating in conjunction with factory ships and land stations the following information:

(1) Methods used to kill each whale, other than a harpoon, and in particular compressed air, and

(2) Number of whales struck but lost.

(f) A record similar to that described in paragraph (e) of this section shall be maintained by vessels engaged in "small-type whaling" operations and by native peoples taking species listed in § 351.1, and all the information mentioned in the said paragraph shall be entered therein as soon as available, and forwarded by Contracting Governments to the Commission.

§ 351.72 Submission of catch data and notification of closure.

(a) Notification shall be given in accordance with the provision of Article VII of the Convention, within two days after the end of each calendar week, of data on the number of baleen whales by species taken in any waters south of 40° South Latitude by all factory ships or whale catchers attached thereto under the jurisdiction of each Contracting Government, provided that when the number of each of these species taken is deemed by the Bureau of International Whaling Statistics to have reached 85 percent of whatever total catch limit is imposed by the Commission notification shall be given as aforesaid at the end of each day of data on the number of each of these species taken.

(b) If it appears that the maximum catches of whales permitted by § 351.35(a) may be reached before 7th of April of any year, the Bureau of International Whaling Statistics shall determine, on the basis of the data provided, the date on which the maximum catch of each of these species shall be deemed to have been reached and shall notify the master of each factory ship and each Contracting Government of that date not less than four days in advance thereof. The taking or attempting to take baleen whales, so notified, by factory ships or whale catchers attached thereto shall be illegal in any waters south of 40° South Latitude after midnight of the date so determined.

(c) Notification shall be given in accordance with the provisions of Article VII of the Convention of each factory ship intending to engage in whaling operations in any waters south of 40° South Latitude.

§ 351.73 Submission of statistical data.

(a) Notification shall be given in accordance with the provisions of Article VII of the Convention with regard to all factory ships and catcher ships of the following statistical information:

(1) Concerning the number of whales of each species taken, the number thereof lost, and the number treated at each factory ship or land station, and

(2) As to the aggregate amounts of oil of each grade and quantities of meal, fertilizer (guano), and other products derived from them, together with

(3) Particulars with respect to each whale treated in the factory ship, land station or "small-type whaling" operations as to the date and approximate latitude and longitude of taking, the species and sex of the whale, its length and, if it contains a foetus, the length and sex, if ascertainable, of the foetus. The data referred to in paragraphs (a) (1) and (3) of this section shall be verified at the time of the tally and there shall also be notification to the Commission of any information which may be collected or obtained concerning the calving grounds and migration of whales.

(b) Notification shall be given in accordance with the provisions of Article VII of the Convention with regard to all factory ships and catcher ships of the following statistical information:

(1) The name and gross tonnage of each factory ship, and

(2) For each catcher ship attached to a factory ship or land station:

(i) The dates on which each is commissioned and ceases whaling for the season,

(ii) The number of days on which each is at sea on the whaling grounds each season, and

(iii) The gross tonnage, horsepower, length and other characteristics of each; vessels used only as tow boats should be specified.

(3) A list of the land stations which were in operation during the period concerned, and the number of miles searched per day by aircraft, if any.

(c) The information required under paragraph (b)(2)(iii) should also be recorded together with the following information, in the log book format shown in Appendix A, and forwarded to the Commission:

(1) Where possible the time spent each day on different components of the catching operation, and

(2) Any modifications of the measures in paragraphs (b)(2)(i)-(iii) or (c)(1) or data from other suitable indicators of fishing effort for "small-type whaling" operations.

§ 351.74 Collection of specimens.

(a) Where possible all factory ships and land stations shall collect from each whale taken and report on:

(1) Both ovaries or the combined weight of both testes, and

(2) At least one ear plug, or one tooth (preferably first mandibular).

(b) Where possible similar collections to those described in paragraph (a) of this section shall be undertaken and reported by small-type whaling operations conducted from shore or by pelagic fleets.

(c) All specimens collected under paragraphs (a) and (b) shall be properly labeled with the platform or other identification number of the whale and be appropriately preserved.

(d) Contracting Governments shall arrange for the analysis as soon as possible of the tissue samples and specimens collected under paragraphs (a) and (b) and report to the Commission on the results of such analyses.

§ 351.75 Review of scientific permits.

(a) A Contracting Government shall provide the Secretariat with proposed scientific permits before they are issued and in sufficient time to allow the Scientific Committee to review and comment on them. The proposed permits should specify:

(1) Objectives of the research;

(2) Number, sex, size and stock of the animals to be taken;

(3) Opportunities for participation in the research by scientists of other nations; and

(4) Possible effect on conservation of the stock.

(b) Proposed permits shall be reviewed and commented on by the Scientific Committee at annual meetings when possible. When permits would be granted prior to the next annual meeting, the Secretary shall send the proposed permits to members of the Scientific Committee by mail for their comment and review. Preliminary results of any research from the permits should be made available at the next annual meeting of the Scientific Committee.

§ 351.76 Submission of laws and regulations.

A Contracting Government shall transmit to the Commission copies of all its official laws and regulations relating to whales and whaling and changes in such laws and regulations.

APPENDIX A

TABLE 1—DAILY RECORD SHEET

Date ——— Catcher name ——— Sheet No. ———

Searching:
  Time started (or resumed) searching........
  Time whales seen *or reported to catcher**........
  Whale species........
  Number seen and no. of groups........
  Position found........
  Name of catcher that found whales........
Chasing:
  Time started chasing (or confirmed whales)........
  Time whale shot or chasing discontinued........
  Asdic used (Yes/No)........
Handling:
  Time whale flagged or alongside for towing........
  Serial no. of catch........
Towing:
  Time started picking up........
  Time finished picking up or starting towing........
  Date and time delivered to factory........
Resting:
  Time stopped (for drifting or resting)........
  Time finished drifting/resting........
  Time ceased operations........

TABLE 1—DAILY RECORD SHEET—Continued

Total searching time
Total chasing time:
  (A) With asdic
  (B) Without asdic
Total handling time
Total towing time
Total resting time
Other time (e.g. bunkering, in port)

---

*Time whales reported to catcher means the time when the catcher is told of the position of a school and starts to move towards it to chase it.

Weather Conditions

Time	Sea state	Wind force and direction	Visibility

Whales Seen (No. and No. of schools)

Blue
Fin
Humpback
Right
Sei
Bryde
Minke
Sperm
Others
(specify)

Signed

TABLE 2—SCHOOLING REPORT

To be completed by pelagic expedition or coastal station for each sperm whale school chased. A separate form to be used each day.

Name of expedition or coastal station
Date ——————— Noon position of factory ship

Time school found
Total number of whales in school
Number of takeable whales in school
Number of whales caught from school by each catcher
Name of catcher
Name of catcher
Name of catcher
Name of catcher
Total number caught from school

Remarks

Explanatory Notes

A. Fill in one column for each school chased with number of whales caught by each catcher taking part in the chase; if catchers chase the school but do not catch any whales from it, enter 0; for catchers in fleet which do not chase that school enter X.

B. A school on this form means a group of whales which are sufficiently close together that a catcher having completed handling one whale can start chasing another whale almost immediately without spending time searching. A solitary whale should be entered as a school of 1 whale.

C. A takeable whale is a whale of a size or kind which the catchers would take if possible. It does not necessarily include all whales above legal size, e.g. if catchers are concentrating on large whales only these would be counted as takeable.

D. Information about catchers from other expeditions or companies operating on the same school should be recorded under Remarks.

SUBCHAPTER C—INTERNATIONAL PACIFIC SALMON FISHERIES COMMISSION

PART 371—FRASER RIVER SOCKEYE AND PINK SALMON REGULATIONS

Subpart A—General Provisions

Sec.
371.1 Purpose of regulations.
371.2 Scope of regulations.
371.3 Definition of terms.
371.4 Other laws and regulations.
371.5 Reporting requirements.
371.6 Notice of change in regulations.
371.7 Unlawful possession.
371.8 Forcible assault of enforcement officer.
371.9 Commission regulations.

APPENDIX A—INTERNATIONAL PACIFIC SALMON FISHERIES COMMISSION REGULATIONS

AUTHORITY: Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776-776f.

SOURCE: 45 FR 43768, June 30, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 371.1 Purpose of regulations.

The regulations in this Subpart A implement the Convention between the United States and Canada for the Protection of the Sockeye and Pink Salmon Fisheries of the Fraser River System, and the Sockeye Salmon or Pink Salmon Fishing Act of 1947.

§ 371.2 Scope of regulations.

This Part 371 applies to all fishing for sockeye salmon and pink salmon and related activities conducted in U.S. Convention Waters during the time the Commission exercises jurisdiction over the sockeye salmon and pink salmon fisheries, except that these regulations and Appendix A do not govern fishing by Treaty Indians exercising treaty-secured fishing rights at the tribes' usual and accustomed fishing places in accordance with regulations promulgated by the U.S. Department of the Interior (25 CFR 256).

§ 371.3 Definition of terms.

When used in this Subchapter C:

(a) *Act* means: the Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776-776f.

(b) *Commission* means: the International Pacific Salmon Fisheries Commission provided for by Article II of the Convention.

(c) *Convention* means: the Convention between the United States of America and Canada for the Protection, Preservation, and Extension of the Sockeye Salmon Fisheries of the Fraser River system, signed at Washington on the 26th day of May, 1930, as amended by the protocol to the convention to include pink salmon, signed at Ottawa on the 28th day of December 1956.

(d) *Convention Waters* means: those waters described in Article I of the Convention.

(e) *Enforcement Officer* means:

(1) Any enforcement agent of the National Marine Fisheries Service.

(2) Any commissioned, warrant, or petty officer of the Coast Guard;

(3) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (e)(2) of this section.

(4) Any other person authorized by the Regional Director, Northwest Region, National Marine Fisheries Service to enforce the provisions of the Convention, the Commission's regulations, the Act and this Part 371.

(f) *Fish, Fishing* means: The fishing for, catching, or taking, or the attempted fishing for, catching, or taking, of any sockeye salmon or pink salmon in Convention Waters.

(g) *Fishing gear* means: any net, trap, hook, or other device, appurtenance or equipment, of whatever kind or description, used or capable of being used, for the purpose of capturing fish or an aid in capturing fish.

(h) *Gill Net* means: gill net as defined in Washington Administrative Code, Chapter 220-16, and lawful gill-net as defined in Washington Administrative Code, Chapter 220-47.

(i) *Person* means: individuals, partnerships, associations, and corporations.

(j) *Pink salmon* means: That species of salmon known by the scientific name *Oncorhynchus gorbuscha.*

(k) *Purse seine* means: Purse seine as defined in Washington Administrative Code, Chapter 220-16 and lawful purse seine as defined in Washington Administrative Code, Chapter 220-47.

(l) *Reef net* means: Reef net as defined in Washington Administrative Code, Chapter 220-16 and lawful reef net as defined in Washington Administrative Code, Chapter 220-47.

(m) *Salmon preserves* means: Salmon preserves defined in Washington Administrative Code, Chapter 220-47.

(n) *Sockeye salmon* means: That species of salmon known by the scientific name *Oncorhynchus nerka.*

(o) *State areas* means: Fishing areas defined as Puget Sound Salmon Management and Catch Reporting Areas in Washington Administrative Code, Chapter 220-22, as amended.

(p) *Troll line* means: Troll line as defined in Washington Administrative Code, Chapter 220-16 and lawful troll line as defined in Washington Administrative Code, Chapter 220-47.

§ 371.4 Other laws and regulations.

Nothing in Part 371 shall be construed to relieve a person from any other requirements imposed by a statute or regulation of the United States or of the State of Washington.

§ 371.5 Reporting requirements.

(a) Any person receiving or purchasing fish caught by any person fishing under § 371.9 Commission Regulations (Appendix A) of this Part 371 shall comply with Washington Administrative Code, Chapter 220-69.

(b) Any person fishing under § 371.9, Commission Regulations (Appendix A) of this Part 371, who sells these fish directly to the consumer, restaurant, boathouse or any other retail outlet shall comply with Washington Administrative Code Chapter 220-69.

(c) No person receiving or purchasing sockeye or pink salmon caught in U.S. Convention Waters during the time the Commission exercises control over fishing for sockeye salmon or pink salmon in U.S. waters shall fail to permit enforcement officers to inspect records or reports required by Washington Administrative Code, Chapter 220-69 or to inspect fish landing, holding or storage areas under the control of this person.

§ 371.6 Notice of change in regulations.

The regulations of the Commission regarding the times permissible to fish are subject to frequent change by Emergency Order. Emergency Orders are published by news releases to radio stations and newspapers in the fishing area. In addition, these Emergency Order schedules will be available by calling the National Marine Fisheries Service toll-free telephone Hotline 1-800-562-6513. The Emergency Orders will be effective from the time of publication or as stated in the order until superseded or modified by further action of the Commission.

[45 FR 43768, June 30, 1980, as amended at 46 FR 32869, June 25, 1981]

§ 371.7 Unlawful possession.

No person subject to this Part 371 shall possess or retain on board a fishing vessel a sockeye or pink salmon while engaged in a fishery for other species in U.S. Convention waters during times these waters are closed by the Commission, except that this provision shall not prohibit the direct transport of legally-caught sockeye or pink salmon to off-loading areas.

§ 371.8 Forcible assault of enforcement officer.

No person shall forcibly assault, resist, oppose, impede, intimidate or interfere with an enforcement officer engaged in enforcing the Convention, the Commission's regulations, the Act or this Part 371.

§ 371.9 Commission regulations.

Appendix A sets forth regulations of the Commission for the 1981 fishing season. These regulations as may be modified from time to time by emergency orders of the Commission and disseminated pursuant to § 371.6 of this Part 371, are the "Regulations of the Commission," violation of which is unlawful under the act.

[46 FR 32869, June 25, 1981]

APPENDIX A—INTERNATIONAL PACIFIC SALMON FISHERIES COMMISSION REGULATIONS

1. No person shall fish for sockeye or pink salmon with nets from the 21st day of June, 1981, to the 4th day of July, 1981, both dates inclusive.

2. (1) No person shall fish for sockeye or pink salmon with purse seines in Puget Sound Salmon Management and Catch Reporting Areas 4B, 5 and 6C:

(a) From the 5th day of July, 1981, to the 15th day of August, 1981, both dates inclusive, except from five o'clock in the forenoon to half past nine o'clock in the afternoon of Monday of each week; and

(b) From the 16th day of August, 1981 to the 12th day of September, 1981, both dates inclusive, except from five o'clock in the forenoon to nine o'clock in the afternoon of Monday of each week.

(2) No person shall fish for sockeye or pink salmon with gill nets in the waters described in subsection (1) of this section:

(a) From the 26th day of July, 1981 to the 1st day of August, 1981; and from the 9th day of August, 1981 to the 15th day of August, 1981, all dates inclusive, except from seven o'clock in the afternoon of Monday to half past nine o'clock in the forenoon of Tuesday of each week; and

(b) From the 5th day of July, 1981 to the 11th day of July, 1981; and from the 19th day of July, 1981 to the 25th day of July, 1981, all dates inclusive, except from seven o'clock in the afternoon of Sunday to half past nine o'clock in the forenoon of Monday of each week; and

(c) From the 16th day of August, 1981, to the 22nd day of August, 1981, and from the 30th day of August, 1981 to the 5th day of September, 1981, all dates inclusive, except from six o'clock in the afternoon of Sunday to nine o'clock in the forenoon of Monday of each week; and

(d) From the 23rd day of August, 1981, to the 29th day of August, 1981, and from the 6th day of September, 1981 to the 12th day of September, 1981, all dates inclusive, except from six o'clock in the afternoon of Monday to nine o'clock in the forenoon of Tuesday of each week.

(3) No person shall fish for sockeye or pink salmon with commercial trolling gear in the waters described in subsection (1) of this section from the 5th day of July, 1981, to the 12th day of September, 1981, both dates inclusive, except from Monday through Friday of each week on those days when purse seine fishing is permitted within that area.

3. (1) No person shall fish for sockeye or pink salmon with purse seines in Puget Sound Salmon Management and Catch Reporting Areas 6, 6A, 7, 7A and 7D:

(a) From the 5th day of July, 1981 to the 15th day of August, 1981, all dates inclusive, except from five o'clock in the forenoon to half past nine o'clock in the afternoon of Monday of each week; and

(b) From the 16th day of August, 1981 to the 19th day of September, 1981, both dates inclusive, except from five o'clock in the forenoon to nine o'clock in the afternoon of Monday of each week.

(2) No person shall fish for sockeye or pink salmon with reef nets in the waters described in subsection (1) of this section:

(a) From the 12th day of July, 1981, to the 18th day of July, 1981; from the 26th day of July, 1981, to the 1st day of August, 1981; and from the 9th day of August, 1981 to the 15th day of August, 1981, all dates inclusive, except from six o'clock in the forenoon to nine o'clock in the afternoon of Sunday of each week; and

(b) From the 5th day of July, 1981 to the 11th day of July, 1981; from the 19th day of July, 1981 to the 25th day of July, 1981, and from the 2nd day of August, 1981 to the 8th day of August, 1981, all dates inclusive, except from nine o'clock in the forenoon to half past nine o'clock in the afternoon of Sunday of each week; and

(c) From the 23rd day of August, 1981 to the 29th day of August, 1981, and from the 6th day of September, 1981 to the 12th day of September, 1981, all dates inclusive, except from half past five o'clock in the forenoon to nine o'clock in the afternoon of Sunday of each week.

(d) From the 16th day of August, 1981 to the 22nd day of August, 1981; and from the 30th day of August, 1981 to the 5th day of September, 1981; and from the 13th day of September, 1981 to the 19th day of September, 1981; except from nine o'clock in the forenoon to nine o'clock in the afternoon of Sunday of each week.

(3) No person shall fish for sockeye or pink salmon with gill nets in the waters described in subsection (1) of this section:

(a) From the 12th day of July to the 18th day of July, 1981; from the 26th day of July, 1981, to the 1st day of August, 1981; and from the 9th day of August, 1981 to the 15th day of August, 1981, all dates inclusive, except from seven o'clock in the afternoon of Monday to half past nine o'clock in the forenoon of Tuesday of each week; and

(b) From the 5th day of July, 1981 to the 11th day of July 1981; from the 19th day of July, 1981, to the 25th day of July, 1981, and from the 2nd day of August, 1981, to the 8th day of August, 1981, all dates inclusive, except from seven o'clock in the afternoon of Sunday to half past nine o'clock in the forenoon of Monday of each week; and

(c) From the 16th day of August, 1981, to the 22nd day of August, 1981; from the 30th day of August, 1981 to the 5th day of September, 1981, and from the 13th day of September, 1981, to the 19th day of September 1981, all dates inclusive, except from six o'clock in the afternoon of Sunday to nine o'clock in the forenoon of Monday of each week; and

(d) From the 23rd day of August, 1981, to the 29th day of August, 1981, and from the 6th day of September, 1981 to the 12th day of September, 1981, all dates inclusive, except from six o'clock in the afternoon of Monday to nine o'clock in the forenoon of Tuesday of each week.

4. (1) No person shall fish for sockeye or pink salmon with nets in that portion of the waters described in subsection (1) of section 3 lying northerly and westerly of a straight line drawn from Iwersen's Dock on Point Roberts in the State of Washington to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia from the 30th day of August, 1981, to the 5th day of September, 1981, and from the 20th day of September, 1981, to the 3rd day of October, 1981, all dates inclusive.

(2) No person shall fish for sockeye or pink salmon with nets in that portion of waters described in subsection (1) of section 3 lying westerly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia from the 6th day of September, 1981, to the 19th day of September, 1981, both dates inclusive.

5. The foregoing recommended regulations shall not apply to the following waters:

(1) Puget Sound Salmon Management and Catch Reporting Areas as follows:

(a) Commencing July 5, 1981, Area 7B.

(b) Areas 6B and 7C.

(2) Preserves previously established by the Director of Fisheries of the State of Washington for the protection of other species of food fish.

6. No person shall fish for sockeye or pink salmon by commercial trolling gear in that portion of Convention Waters westerly of a straight line drawn from Tatoosh Island Lighthouse in the State of Washington to Bonilla Point in the Province of British Columbia comprising the Territorial waters of the United States and those High Seas waters contained in the United States Fishery Conservation Zone from the first day of June 1981 to the 14th day of July 1981, both dates inclusive.

7. All times hereinbefore mentioned shall be Pacific Daylight Saving Time.

[46 FR 32869, June 25, 1981, as amended at 46 FR 39829, Aug. 5, 1981]

CHAPTER IV—JOINT REGULATIONS (UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR AND NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE); ENDANGERED SPECIES COMMITTEE REGULATIONS

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SUBCHAPTER B—[RESERVED]

SUBCHAPTER C—ENDANGERED SPECIES EXEMPTION PROCESS

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SUBCHAPTER A

PART 401—ANADROMOUS FISHERIES CONSERVATION, DEVELOPMENT AND ENCHANCEMENT

Sec.

401.1 Administration.
401.2 Definitions.
401.3 Submission of documents.
401.4 Activities prohibited.
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401.19 Statements and payrolls.
401.20 Officials not to benefit.
401.21 Patents and inventions.
401.22 Civil rights.

AUTHORITY: Anadromous Fish Conservation Act (79 Stat. 1125, as amended, 84 Stat. 214, 88 Stat. 398), 16 U.S.C. 757a-757f.

SOURCE: 40 FR 26678, June 25, 1975, unless otherwise noted.

§ 401.1 Administration.

The Director of the U.S. Fish and Wildlife Service and the Director of the National Marine Fisheries Service shall jointly administer the Anadromous Fish Conservation Act for the Secretaries.

§ 401.2 Definitions.

As used in this part, terms shall have the meanings ascribed in this section.

(a) *Secretary.* The Secretary of Commerce, the Secretary of the Interior, or their authorized representatives.

(b) *Act.* The Anadromous Fish Conservation Act, 16 U.S.C. 757a-757f.

(c) *Eligible states.* Any coastal State of the United States, the State of Vermont, and the States bordering the Great Lakes. The area within the Columbia River basin is excluded.

(d) *State fishery agency.* Any department(s), division(s), commission(s), or official(s) of a State empowered under its laws to regulate a commercial or sport fishery.

(e) *Non-Federal interest.* Any organization, association, institution, business, school, individual, or group of individuals, municipality and others outside the Federal Government, in addition to State fishery agencies, which desire to cooperate within the terms of the Act.

(f) *Cooperator.* One or more States acting jointly or severally or other non-Federal interests, participating in a project agreement or grant-in-aid award with the Secretary.

(g) *Anadromous fish.* Aquatic, gill breathing, vertebrate animals bearing paired fins which migrate to and spawn in fresh water, but which spend part of their life in an oceanic environment; also fish in the Great Lakes that ascend streams to spawn.

(h) *Application for Federal assistance.* A description of work to be accomplished, including objectives and needs, expected results and benefits, approach, cost, location and time required for completion.

(i) *Project agreement.* The formal document executed between the Secretary of the Interior and the Cooperator, committing the Cooperator to the performance of described activities and the Federal Government to participation in the financing of those activities.

(j) *Grant-in-Aid award.* The formal document executed between the Secretary of Commerce and the Cooperator, committing the Cooperator to the performance of described activities and the Federal Government to participation in the financing of those activities.

§ 401.3 Submission of documents.

Applications for Federal assistance and other documents for projects relating generally to recreational fisheries shall be submitted to the concerned Regional Office of the U.S. Fish and Wildlife Service, or for projects relating generally to commercial fisheries of the concerned Regional

Office of the National Marine Fisheries Service.

§ 401.4 Activities prohibited.

Law enforcement, public relations, harvesting, marketing and processing activities, construction of fisherman use facilities, and activities concerned with landlocked anadromous fish populations (except fish in the Great Lakes that ascend streams to spawn) may not be financed under the Act.

§ 401.5 Coordination with States.

The Secretary will approve an Application for Federal Assistance only after he has coordinated the application with and solicited recommendations from those State and other non-Federal entities which have management authority over the resource to be affected.

§ 401.6 Prosecution of work.

(a) Project work shall be carried through to a state of completion acceptable to the Secretary with reasonable promptness. Failure to render satisfactory performance reports or failure to complete the project to the satisfaction of the Secretary shall be cause for suspension of Federal assistance for the project until the project provisions are satisfactorily met. Federal assistance may be terminated upon determination by the Secretary that satisfactory progress has not been maintained. The Secretary shall have the right to inspect and review work at any time.

(b) Research and development work shall be continuously coordinated by the Cooperator with studies conducted by others to avoid unnecessary duplication.

(c) All work shall be performed in accordance with applicable local laws, except when in conflict with Federal laws or regulations, in which case Federal laws or regulations shall prevail.

§ 401.7 General information for the Secretary.

Before any Federal funds may be obligated for any project an applicant shall furnish to the Secretary, upon his request, information regarding the laws affecting anadromous fish and the authority of the applicant to participate in the benefits of the Act.

(a) *Document signature.* Individuals authorized to sign project documents under the Commercial Fisheries Research and Development Act of 1964 (78 Stat. 197, as amended), 16 U.S.C. 779-779f, or the Federal Aid in Sport Fish Restoration Act (64 Stat. 430, as amended), 16 U.S.C. 777-777f, may likewise sign project documents contemplated in this part.

(b) *Program information.* The Secretary may, from time to time, request, and the Cooperators shall furnish, information relating to the administration and maintenance of any project established under the Act.

§ 401.8 Availability of funds.

The period of availability of funds to the States or other non-Federal interests for obligation shall be established by the administering Federal agency.

§ 401.9 Payments to cooperators.

Payments shall be made to Cooperators in accordance with provisions of grant-in-aid awards or project agreements.

§ 401.10 Request for payment.

Request for payment shall be on forms provided by the Secretary, certified as therein prescribed, and submitted to the Regional Director by the Cooperator.

§ 401.11 Property as matching funds.

The non-Federal share of the cost of projects may be in the form of real or personal property. Specific procedures to be used by grantees in placing the value on real or personal property for matching funds are set forth in Attachment F of Federal Management Circular 74-7.

§ 401.12 Ownership of property.

When real property is acquired pursuant to the provisions of the Act, title to such property, or interests therein, shall be vested in the United States, and the conveying instrument shall recite the United States of America as the grantee. However, if the Secretary determines that under the terms of the application for Federal assistance and grant-in-aid award or project agreement, the intent and purpose of the Act may be better served by other ownership of such property, an appropriate transfer may be made. When real or personal property is utilized as matching funds, title to such property shall be in the Cooperator unless otherwise specified in the grant-in-aid award or project agreement.

§ 401.13 Personnel.

The Cooperator shall maintain an adequate and competent force of employees to initiate and carry approved work to satisfactory completion.

§ 401.14 Inspection.

Cooperator supervision of each project shall include adequate and continuous inspection. The project will be subject at all times to Federal inspection.

§ 401.15 Record retention.

All records of accounts and reports with supporting documentation thereto, as set forth in Attachment C of Federal Management Circular 74-7, will be retained by the Cooperator for a period of 3 years after submission of the final expenditure report on the project. Record retention for a period longer than 3 years is required if audit findings have not been resolved.

§ 401.16 Records and reporting.

Performance reports and other reports shall be furnished as requested by the Secretary. Cost records shall be maintained separately for each project. The accounts and records maintained by the Cooperator, together with all supporting documents, shall be open at all times to the inspection of authorized representatives of the United States, and copies thereof shall be furnished when requested.

§ 401.17 Safety and accident prevention.

In the performance of each project, the Cooperator shall comply with all applicable Federal, State, and local laws governing safety, health and sanitation.

§ 401.18 Contracts.

A Cooperator may use its own regulations or guidelines in obtaining services by contract or otherwise, provided that they adhere to applicable Federal laws, regulations, policies, guidelines, and requirements, as set forth in Attachment 0 of Federal Management Circular 74-7. However, the Cooperator is the responsible authority, without recourse to the Federal agency, regarding the settlement of such contractual issues.

§ 401.19 Statements and payrolls.

The regulations of the Secretary of Labor applicable to contractors and subcontractors (29 CFR Part 3), made pursuant to the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as amended, are made a part of the regulations in this part by reference. The Cooperator will comply with the regulations in this part and any amendments or modifications thereof, and the Cooperator's prime contractor will be responsible for the submission of statements required of subcontractors thereunder. The foregoing shall apply except as the Secretary of Labor may specifically provide for reasonable limitation, variations, tolerances, and exemptions.

§ 401.20 Officials not to benefit.

No Member of, or Delegate to, Congress, or resident Commissioner, shall be admitted to any share or any part of any project agreement made under the Act, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

§ 401.21 Patents and inventions.

Determination of the patent rights in any inventions or discoveries resulting from work under project agreements entered into pursuant to the Act shall be consistent with the "Government Patent Policy" (President's memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

§ 401.22 Civil rights.

Each application for Federal assistance, grant-in-aid award, or project agreement shall be supported by a statement of assurances executed by the Cooperator providing that the project will be carried out in accordance with Title VI, Nondiscrimination in Federally Assisted Programs of the Civil Rights Act of 1964 and with the Secretary's regulations promulgated thereunder.

PART 402—INTERAGENCY COOPERATION—ENDANGERED SPECIES ACT OF 1973

Sec.
402.01 Scope.
402.02 Definitions.
402.03 Applicability to previously initiated actions.
402.04 Consultation.

Authority: Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

Source: 43 FR 874, Jan. 4, 1978, unless otherwise noted.

§ 402.01 Scope.

This part interprets and implements section 7 of the Endangered Species Act of 1973 (hereinafter the Act). Section 7 (16 U.S.C. 1536) applies to all listed species of fish, wildlife, or plants and imposes three burdens upon the Federal agencies. First, it directs them to utilize their authorities to carry out conservation programs for listed species. Such affirmative conservation programs must comply with any applicable permit requirements of 50 CFR Parts 17, 220, 222 and 227 for listed species and should be fully coordinated with the appropriate Director. Second, it requires every Federal agency to insure that its activities or programs in the United States, upon the high seas, and in foreign countries will not jeopardize the continued existence of a listed species. And third, section 7 directs all Federal agencies to insure that their activities or programs do not result in the destruction or adverse modification of critical habitat. The United States Fish and Wildlife Service and the National Marine Fisheries Service share responsibilities for the Act. A Federal agency can determine which Service to initiate consultation with by scanning the list of species under the jurisdiction of the National Marine Fisheries Service located at 50 CFR 222.23(a) and 227.4. If the Federal agency's activity or program may affect a listed species which is cited in 50 CFR 222.23(a) or 227.4, then the agency shall initiate consultation with the National Marine Fisheries Service. If the listed species is not cited in 50 CFR 222.23(a) or 227.4, the Federal agency shall initiate consultation with the Fish and Wildlife Service.

§ 402.02 Definitions.

"Activities or programs" means all actions of any kind authorized, funded, or carried out by Federal agencies, in whole or in part, examples of which include, but are not limited to: (1) Actions intended to conserve listed species or their habitat; (2) the promulgation of regulations; (3) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (4) actions directly or indirectly causing modifications to the land, water, or air.

"Critical habitat" means any air, land, or water area (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of a listed species) and constituent elements thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. The constitutent elements of critical habitat include, but are not limited to: physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.

"Destruction or adverse modification" means a direct or indirect alteration of critical habitat which appreciably diminishes the value of that habitat for survival and recovery of a listed species. Such alterations include, but are not limited to those diminishing the requirements for survival and recovery listed in § 402.05(b). There may be many types of activities or programs which could be carried out in critical habitat without causing such diminution.

"Director or Regional Director" means the Director or one of the Regional Directors of the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate, for purposes of consultation.

"Federal agency" means each authority of the Government of the United States except for the Congress, the Courts of the United States, the Governments of the Territories, Commonwealths, or possessions of the United States, or the Government of the District of Columbia.

"Jeopardize the continued existence of" means to engage in an activity or program which reasonably would be expected to reduce the reproduction, numbers, or distribution of a listed species to such an extent as to appreciably reduce the likelihood of the survival and recovery of that species in the wild. The level of reduction necessary to constitute "jeopardy" would be expected to vary among listed species.

"Listed species" means any species of fish, wildlife, or plant which is designated as endangered or threatened under the Act.

"Recovery" means improvement in the status of listed species to the point at which listing is no longer required.

§ 402.03 Applicability to previously initiated actions.

Section 7 applies to all activities or programs where Federal involvement or control remains which in itself could jeopardize the continued existence of a listed species or modify or destroy its critical habitat.

§ 402.04 Consultation.

(a) *Initiation.* (1) It is the responsibility of each Federal agency to review its activities or programs and to identify any such activity or program that may affect listed species or their habitat. Reviewing Federal agencies may obtain advice from the Service, but this is supplemental to, and not a substitute for, the formal consultation process set forth in this part. Where a Federal agency funds or authorizes an activity or program to be carried out by a non-Federal entity, the Federal agency shall initiate the formal consultation process and not the non-Federal entity.

(2) If a Federal agency decides that its activities or programs will not affect listed species or their habitat, consultation shall not be initiated unless requested by the Service.

(3) When a Federal agency identifies activities or programs that may affect listed species or their habitat, the agency shall convey a written request for consultation with available information to: the Regional Director for the Region where the activity or program is or will be carried out; or to the Director or Regional Director for the Region where the Federal agency is headquartered, if more than one Region is involved; or to the Director if foreign countries or the high seas are involved. In addition, if foreign countries or the high seas are involved, a copy of the request for consultation and all subsequent correspondence shall be forwarded to the Secretary of State c/o the Director, Office of Environmental Affairs. Any request for consultation may encompass, subject to the approval of the Director or Regional Director, a number of similar individual activities within a given geographical area, administrative unit, or segment of a comprehensive plan. Until consultation has been completed and a biological opinion issued, good faith consultation shall preclude a Federal agency from making an irreversible or irretrievable commitment of resources which would foreclose the consideration of modifications or alternatives to the identified activity or program.

(4) In addition, the Director or Regional Director will request initiation of consultation if he identifies any activity or program of a Federal agency that has not received prior consultation and that may affect listed species or their habitat.

(5) Informal consultation may be initiated at the field level between the Service and the Federal agencies or their authorized representatives. Such informal consultation is supplemental to, and not a substitute for, the formal consultation process set forth in this part.

(b) *Form.* (1) Consultation under section 7 may be consolidated with interagency cooperation required by other statutes, such as the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) or the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The satisfaction of the requirements of these other statutes, however, does not in itself relieve a Federal agency of its obligation to comply with the consultation procedures set forth in this part.

(2) When particular programs or activities involve more than one Federal agency, these agencies may, upon notification of the Director or Regional Director, fulfill their consultation responsibilities through a single lead agency. Factors relevant in determining an appropriate lead agency include the time sequence in which the agencies become involved, the magnitude of their respective involvement and their relative expertise with respect to the environmental effects of the activity or program.

(c) *Assistance from the Service.* It is the primary responsibility of each Federal agency requesting consultation to conduct the appropriate studies and to provide the biological information necessary for an adequate review of the effect an identified activity or program has upon listed species or their habitat. To the extent it is available, the Service will upon request provide all relevant data and reports, personnel, and recommendations for additional studies or surveys, but the Service is not obligated to fund any such additional studies or surveys.

(d) *Assistance from other sources.* Federal agencies may seek assistance from any source to obtain the biological information necessary for a review of the effect an activity or program has upon listed species or their habitat. Such assistance may include, but is not limited to, that obtained by contract or required by regulations of the Federal agency. Although it may authorize a non-Federal representative to participate in the consultation process pursuant to approved counterpart regulations, the ultimate responsibility for compliance with the procedures of this section remains with the Federal agency and cannot be delegated by it.

(e) *Threshold examination.* Upon receipt of a written request for consultation, the Director or Regional Director will conduct a threshold examination of the identified activity or program. A threshold examination will include a review of available information and may include an on-site inspection of the area.

(1) If, in the opinion of the Director, an identified activity or program will promote the conservation of listed species, the appropriate Federal agency shall be notified in writing within 60 days after consultation is initiated, and additional section 7 consultation shall be unnecessary. The Service, to the extent feasible, will assist in carrying out such programs if requested by the Federal agency.

(2) If an identified activity or program is not specifically for the conservation of listed species, but the Director or Regional Director concludes from the threshold examination that the activity or program is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the appropriate Federal agency shall be notified in writing within 60 days after consultation is initiated and further section 7 consultation shall be unnecessary.

(3) If an identified activity or program is not specifically for the conservation of listed species and the Director or Regional Director concludes from the treshold examination that the activity or program is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the appropriate Federal agency shall be notified in writing within 60 days after consultation is initiated and further section 7 consultation shall be unnecessary.

(4) The biological opinions issued pursuant to paragraphs (e)(1), (2) and (3) of this section shall be accompanied by a statement of the facts and documentation on which they are based and may include recommendations for modifications in the identified activity or program which would enhance the conservation and protec-

[illegible]

[illegible] the Di- [illegible] likely to [illegible] existence of [illegible] result in the destruction or adverse modification of its [illegible] habitat, the Federal agency [illegible] notified in writing within 60 days after formal consultation is initiated. The Federal agency, with assistance as feasible from the Service and other sources of expertise, shall then obtain additional information and conduct, as appropriate, biological surveys or studies to determine how the activity or program may affect listed species or their critical habitat. Within 60 days of receipt of adequate information and documentation, unless special circumstances require negotiation of a longer period, the Service will end consultation by issuing a biological opinion pursuant to the provisions of paragraphs (e) (1), (2), (3), and (4) of this section, as appropriate.

(g) *Responsibilities after consultation.* Upon receipt and consideration of the biological opinion and recommendations of the Service, it is the responsibility of the Federal agency to determine whether to proceed with the activity or program as planned in light of its section 7 obligations. Where the consultation process has been consolidated with interagency cooperation required by other statutes such as the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) or the National Environmental Policy Act (42 U.S.C. 4321 et seq.), the final biological opinion and recommendations of the Service shall be stated in the documents required by those statutes.

(h) *Reinitiation.* Consultation shall be reinitiated by the Service or by the Federal agency if: (1) New information reveals impacts of the identified activity or program that may affect listed species or their habitats;

(2) The identified activity or program is subsequently modified, whether as a result of a biological opinion issued after consultation or not; or

(3) A new species is listed that may be affected by the identified activity or program.

(i) *Counterpart regulations.* The consultation procedures set forth in this section may be superseded for a particular Federal agency by joint counterpart regulations drafted by that agency and the Fish and Wildlife Service and the National Marine Fisheries Service. Such counterpart regulations shall be published in the FEDERAL REGISTER as proposed and final rulemakings and shall provide for a minimum 60-day period for public comment.

PART 424—LISTING ENDANGERED AND THREATENED SPECIES AND DESIGNATING CRITICAL HABITAT

Subpart A—General Provisions

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424.18 Final rules.
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424.20 Periodic review.

AUTHORITY: Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

SOURCE: 45 FR 13022, Feb. 27, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 424.01 Scope and purpose.

(a) This Part 424 provides rules for revising the Lists of Endangered and Threatened Wildlife and Plants and, where appropriate, designating their Critical Habitats. Criteria for determining species to be Endangered or Threatened and for designating Critical Habitats are provided. Procedures for receiving and considering petitions to revise the lists and for conducting periodic reviews of species contained in the lists are also established.

(b) The purpose of this rule is to interpret and implement those portions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et. seq.*), that pertain to the listing of species and the determination of Critical Habitats.

[45 FR 13022, Feb. 27, 1980; 45 FR 64195, Sept. 29, 1980]

§ 424.02 Definitions.

(a) The definitions of terms in 50 CFR 402.02 shall apply to this Part 424, except as otherwise stated.

(b) "Conservation," "conserve," and "conserving" mean to use and the use of all methods and procedures which are necessary to bring any Endangered species or Threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(c) "Critical Habitat" means (1) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (i) essential to the conservation of the species and (ii) which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination by the Director that such areas are essential for the conservation of the species.

(d) "Director" means the Director of the U.S. Fish and Wildlife Service, Department of Interior, or the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, as appropriate.

(e) "Endangered species" means a species which is in danger of extinction throughout all or a significant portion of its range.

(f) "List" or "lists" means the lists of Endangered or Threatened wildlife and plants found at 50 CFR 17.11 or 17.12.

(g) "Plant" means any member of the plant kingdom, including seeds, roots, and other parts thereof.

(h) "Public hearing" means an informal hearing to provide the public with the opportunity to give their comments on a proposal to designate Critical Habitat and, if appropriate, the accompanying proposal to list a species.

(i) "Public meeting" means an informal meeting between Service representatives and the public that permits an exchange of information on a proposed rule.

(j) "Special management considerations or protection" means any methods or procedures useful in protecting physical and biological features for the conservation of listed species.

(k) "Species" includes any species or subspecies of fish or wildlife or plant, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. Excluded are those species of the Class Insecta determined by the Director to constitute a pest whose protection under the provisions of the Act would present an overwhelming and overriding risk to man.

(l) "Threatened species" means any species which is likely to become an Endangered species within the foreseeable future throughout all or a significant portion of its range.

(m) "Wildlife" or "fish and wildlife" means any member of the Animal Kingdom, including without limitation, any vertebrate, mollusk, crustacean, arthropod or other invertebrate and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

[45 FR 13022, Feb. 27, 1980; 45 FR 64195, Sept. 29, 1980]

Subpart B—Revision of the Lists

§ 424.10 General.

The Director may add a species to the lists or designate Critical Habitat, delete a species or Critical Habitat, change the listed status of a species, change the boundary of an area designated as Critical Habitat, or adopt or modify special rules (see 50 CFR 17.40–17.48 and Parts 222 and 227) applicable for an Endangered or Threatened species only in accordance with the procedures of this part.

§ 424.11 Factors for listing, reclassifying, or removing species.

(a) Any species or taxonomic group of species (e.g., genus, subgenus) as defined in § 424.02 is eligible for listing under the Act. A taxon of higher rank than species will be listed only if all component species are individually Endangered or Threatened. In determining whether a particular taxon or population is a species for the purposes of the Act, the Director shall rely on standard taxonomic distinctions and the biological expertise of the Service and the scientific community concerned with that group of taxa.

(b) A species shall be listed if the Director determines on the basis of the best scientific and commercial data available to him after conducting a review of the species' status that the species is Endangered or Threatened because of any one or a combination of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Utilization for commerical, sporting, scientific, or educational purposes at levels that detrimentally affect it;

(3) Disease or predation;

(4) Absence of regulatory mechanisms adequate to prevent the decline of a species or degradation of its habitat; and

(5) Other natural or manmade factors affecting its continued existence.

(c) The fact that a species of fish, wildlife, or plant is protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora or similar international agreement on such species may constitute evidence that the species is Endangered or Threatened. The weight of the evidence will vary depending on the international agreement in question and the criteria pursuant to which the species was listed under the agreement. The Director shall give full consideration to any species protected by such an international agreement to determine whether the species is Endangered or Threatened.

(d) The factors for removing a species from the list are those in paragraph (b) of this section. The data to support such removal must be the best scientific and commercial data available to the Director to substantiate that the species is neither Endangered nor Threatened for one or more of the following reasons:

(1) *Extinction.* Unless each individual of the listed species was previously identified and located, a sufficient period of time must be allowed before delisting to clearly insure that the species is in fact extinct.

(2) *Recovery of the species.* The principal goal of the Services is to return listed species to a point at which protection under the Act is no longer required. A species may be delisted if the evidence shows that it is no longer Endangered or Threatened.

(3) *Original data for classification in error.* Subsequent investigations may produce data that show that the best scientific or commercial data available at the time that the species was listed were in error.

§ 424.12 Criteria for designating Critical Habitat.

(a) Critical Habitat shall be specified to the maximum extent prudent at the time a species is proposed for addition to the list. If the Director determines that the designation of Critical Habitat is not prudent, he will state the reasons for such determination in the proposed and final rules listing a species. Conditions under which a designation of Critical Habitat is not prudent include, but are not limited to, the following:

(1) When the species is threatened by taking or other human activity and identification of Critical Habitat can be expected to increase the degree of such threat to the species, or

(2) When such designation of Critical Habitat would not be beneficial to the species.

(b) The Director shall consider in determining what areas are Critical Habitat those physiological, behavioral, ecological, and evolutionary requirements essential to the conservation of the species and which may require special management considerations or protection. These requirements include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally,

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of listed species.

When considering the designation of Critical Habitat, the Director shall focus on the biological or physical constituent elements within the defined area that are essential to the conservation of the species. Known primary constituent elements shall be listed with the Critical Habitat description. Primary constituent elements which may be identified include, but are not limited to, the following: Roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host animal or plant, pollinator, geological formation, vegetation type, tide, and specific soil types.

(c) The Director shall identify the significant activities which would either affect an area considered for designation as Critical habitat or be likely to be affected by the designation, and shall consider the reasonably probable economic and other impacts of the designation upon such activities. The Director may exclude any such area from the Critical Habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying the area as part of the Critical Habitat. The Director shall not exclude any such area if he determines, based on the best scientific and commercial data available, that the failure to designate that area as Critical Habitat will result in the extinction of the species.

(d) Each Critical Habitat will be defined by specific prescribed limits using reference points and lines as found on standard topographic maps of the area. Each area will be referenced to the State, county(ies), or other local governmental units within which all or part of the Critical Habitat is located. Unless otherwise indicated within the Critical Habitat descriptions, the names of the State and county(ies) are provided for informational purposes only and do not constitute the boundaries of the area. Ephemeral reference points (e.g., trees, sand bars) shall not be used.

(e) When several suitable habitats are located in close proximity to one another, an inclusive area may be designated as Critical Habitat. Example: Several dozen or more small ponds, lakes, and springs are found in a small local area. The entire area could be designated Critical Habitat.

(f) The Director shall designate as Critical Habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.

(g) Critical Habitat may be established for those species previously listed as Threatened or Endangered for which no Critical Habitat has been previously established.

(h) Additional Critical Habitat may be added and existing ones may be modified or eliminated, as new data become available to the Director.

[45 FR 13022, Feb. 27, 1980; 45 FR 64195, Sept. 29, 1980]

§ 424.13 Sources of information and relevant data.

When considering any revision of the lists, the Director shall consult as appropriate with the affected States, interested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas. Data reviewed by the Director may include, but are not limited to, scientific or commercial publications, administrative reports, maps or other graphic materials, information received from persons expert on the subject, and comments from interested parties. Prior to proposing a rule to list or remove a species, the Director shall conduct a review of the status of the species.

§ 424.14 Petitions.

(a) Any interested person may submit a petition to the Director to review the status of any species with a view to taking one of the actions described in § 424.10. Such petitions must be in writing, contain the date submitted, and the name, signature, address, telephone number, and the association, institution, or business, if any, represented by the petitioner. The Director shall acknowledge in writing receipt of the petition within 30 days.

(b) The Director shall determine whether substantial evidence has been presented in support of the measure recommended by a petitioner. "Substantial evidence" is that amount of evidence that would lead a reasonable person to conclude that the measure proposed in the petition is warranted. In making this determination the Director shall consider whether the petition:

(1) Clearly indicates the administrative measure recommended, the scientific and any common name of the species involved, and if appropriate, the precise area recommended as Critical Habitat;

(2) Contains detailed narrative justification for the recommended measure, describing, based on available information, the past and present numbers and distribution of the involved species, the particular threats confronting the species, and the features and importance of any recommended Critical Habitat;

(3) Indicates any beneficial or adverse effect on the species of designating Critical Habitat;

(4) Provides information on the status of the species over a significant portion of its range; and

(5) Is accompanied by appropriate supporting documentation such as a list of bibliographic references, reprints of pertinent publications, copies of written reports or letters from authorities, and maps, as appropriate.

(c) If the Director finds that substantial evidence has not been presented, the petition shall be denied and the petitioner shall be so notified and advised of the reasons for denial within 90 days. If the petitioner proposes to list, delist, or change the status of a species and the Director finds that substantial evidence has been presented in such petition, the Director shall:

(1) Promptly publish a notice in the FEDERAL REGISTER announcing such determination, (2) conduct and publish in the FEDERAL REGISTER a status review of the species that is the subject of the petition within 90 days of receipt of the petition and (3) indicate at the time the status review is published how the Service intends to proceed with respect to the listing, delisting, or reclassifying of the species.

(d) If the petition relates only to Critical Habitat or a special rule for the conservation of a species, the Director will promptly conduct a review in accordance with the Administrative Procedure Act (5 U.S.C. 553) and respective departmental regulations and take appropriate action.

§ 424.15 Notices of review.

If the Director finds that one of the actions described in § 424.10 may be warranted, but that the available evidence is not sufficiently definitive to justify proposing the action, he may publish a notice of review in the FEDERAL REGISTER. The notice of review will describe the measure under consideration, briefly explain the reasons for considering the action, and solicit comments and additional information on the action under consideration. At the time of publication of the notice, notification in writing shall be sent to the Governors of any affected States and the governments of any foreign countries in which the subject species normally occurs. If a Critical Habitat area is involved in the review, notification will also be sent in writing to any Federal agencies and local governments with jurisdiction over lands or waters under consideration and to all general local governments within or adjacent to the potential Critical Habitat.

§ 424.16 Proposed rules—general.

(a) Based on the initial review conducted pursuant to § 424.14(c), § 424.15, § 424.20, or on other information that the Service has obtained, the Director may propose revising the lists as described in § 424.10.

(b) *Procedures*—(1) *Content of proposed rule.* A proposed rule promulgated to carry out the purposes of the Act will be published in the FEDERAL REGISTER. These proposals will include the complete text of the proposed rule, a summary of the data on which the proposal is based (including, when appropriate, citation of pertinent information sources), and the relationship of such data to the proposed rule. Rules proposing the listing, delisting or reclassifying of a species or the designation of Critical Habitat will also include a summary of factors affecting the species and a description of the anticipated effects of the rulemaking if finalized in proposed form.

(2) *Period for public comments.* At least 60 days will be allowed for public comment following publication in the FEDERAL REGISTER of a rule proposing the listing, reclassifying, or removal of a species. Except as provided under § 424.17(b)(2), all other proposed rules will be subject to a comment period of at least 30 days following the publication in the FEDERAL REGISTER.

(3) *Notification of and comment by governors of affected states and governments of foreign countires.* For proposed rules to list, delist or reclassify a species the Director shall give notice of any proposed rule in writing through the Department of State to the governments of any foreign countries in which the subject species normally occurs or whose citizens harvest such species from the high seas. With respect to resident species of fish and wildlife the Director shall give notice of any proposed rule in writing to the Governors of the States in which the subject species normally occurs. The Governor(s) so contacted will be allowed 90 days after notification to submit comments and recommendations on the proposed rule except to the extent that such period is shortened by agreement between the Director and Govenor(s) concerned.

(4) *Offer for publication.* For rules proposing the listing, delisting or reclassifying of species or designating Critical Habitat the Director shall offer the substance of the FEDERAL REGISTER notice proposing the rule for publication in appropriate journals or newsletters of the scientific community.

(5) *Public meetings on proposals not involving Critical Habitat.* If the rule proposes to list, delist or change the status of a species and does not specify Critical Habitat, the Director shall promptly hold a public meeting on the proposed rule within or adjacent to the area in which the species is located, if a request for such a meeting is made in writing by any person to the Director within 45 days after the date of publication of the proposal in the FEDERAL REGISTER. The specific locations and times of such meetings will be determined by the Director and published in the FEDERAL REGISTER.

§ 424.17 Proposed rules—additional procedures for Critical Habitat.

(a) In addition to the general procedures for proposed rules in § 424.16, there are additional requirements for proposals involving Critical Habitat.

(b) *Procedures*—(1) *Additional content of proposed rule.* The proposed rule will contain a map of the proposed Critical Habitat and will, to the maximum extent practicable, be accompanied by a brief description of those activities (whether public or private) that might occur in the area and, in the opinion of the Director, may adversely modify such habitat or may be affected by designating the area as Critical Habitat.

(2) *Period for public comments.* At least 60 days will be allowed for public comment following publication in the FEDERAL REGISTER of a proposal involving Critical Habitat.

(3) *Public meetings or hearings.* If a proposed rule includes Critical Habitat, the Director shall hold a public meeting on the proposal within the area in which such Critical Habitat is

located in each State. The specific locations and times of such meetings shall be determined by the director and published in the FEDERAL REGISTER. A public hearing shall be held after the public meeting in each State in which such habitat is proposed, if requested in writing no later than 15 days after a scheduled public meeting. Requests for a public hearing must be addressed to the Director. A public hearing will be held promptly but not sooner than 15 days after notice of the hearing is given unless good cause is shown. The Director may conduct a public hearing on his own motion.

(4) *Other notifications and notices.* When the proposed rule involves Critical Habitat, the Director shall: (i) Notify in writing any Federal agencies with jurisdiction over lands included in the area under consideration; (ii) publish a summary of the proposed rule (including a source of further information and a map of the Critical Habitat) in a newspaper of general circulation within or adjacent to such habitat within 30 days of the date of the proposal; and (iii) give actual notice of the proposed rule (including its complete text), draft National Environmental Policy Act documents, and impact analyses prepared on the proposed rule to all general local governments located within or adjacent to the proposed Critical Habitat within 30 days of the date of the proposal. However, any accidental failure to provide actual notice pursuant to paragraph (b)(4)(iii)(c) of this section to all such local governments will not invalidate any Critical Habitat determination.

(5) *Consideration of economic and other impacts.* (i) Upon determining that the proposal of a particular area as Critical Habitat is appropriate for biological reasons, the Director shall gather economic and other information on impacts associated with the Critical Habitat designation on significant activities in the area, contacting appropriate Federal agencies, States, and other knowledgeable entities.

(ii) The Service may publish a notice of intent or review in the FEDERAL REGISTER prior to proposal of a rule in order to receive additional economic or other relevant information from the public concerning the area that may be affected by the Critical Habitat designation (see § 424.15).

(iii) The Service shall prepare a draft impact analysis which will consider the beneficial or detrimental economic and other impacts of the Critical Habitat designation. This draft impact analysis is available to the public at the time the proposed rule is published in the FEDERAL REGISTER.

[45 FR 13022, Feb. 27, 1980; 45 FR 64195, Sept. 29, 1980]

§ 424.18 Final rules.

(a) Prior to the time of a final rulemaking involving Critical Habitat in the proposal, the Service shall prepare a final impact analysis based upon information contained in the draft impact analysis and that received during the comment period, including information provided at public meetings and hearings. The final impact analysis will analyze and discuss both the beneficial and deterimental economic and other relevant impacts of possible Critical Habitat configurations on significant activities in the area. This analysis will form the basis for the Director's decision as to whether or not to exclude any area from the Critical Habitat. The Director may exclude an area from Critical Habitat upon determining that the benefits of excluding such an area from the Critical Habitat outweigh the benefits of specifying the area as part of the Critical Habitat. However, an area may not be excluded from Critical Habitat if the best scientific and commercial data available show that the failure to designate that area as Critical Habitat will result in the extinction of the species.

(b) After consideration of public comments and the available data, the Director shall either publish a final rule or publish a notice of withdrawal of the proposal in the FEDERAL REGISTER.

(c) *Contents of the final rule.* A final rule promulgated to carry out the purposes of the Act will be published in the FEDERAL REGISTER. The document will include the complete text of the rule, a summary of the comments and recommendations received on the proposal (including any applicable public hearings), summaries of the data on which the rule is based and the relationship of such data to the final rule, and a description of the anticipated effects of the rulemaking. Final rules that list, delist or reclassify a species or designate Critical Habitat shall also provide a summary of factors effecting the species. A rule involving a Critical Habitat area will also contain a description of the boundaries of such area and a map of any designated Critical Habitat, and will, to the maximum extent practicable, be accompanied by a brief description of those kinds of activities (whether public or private) that might occur in the area and which, in the opinion of the Director, may adversely modify such habitat or be impacted by designation of the area as Critical Habitat.

(d) *Two-year limitation of proposal.* A final regulation adding a species to the lists shall be published in the FEDERAL REGISTER not later than two years after the date such rule was proposed. If a final rule is not adopted within this two-year period, the Director shall withdraw the proposed rule and will publish notice of such withdrawal in the FEDERAL REGISTER not later than 30 days after the end of such period. The Director shall not propose a regulation adding to the list any species for which a proposed regulation has been withdrawn under this section unless he determines that sufficient new information is available to warrant the proposal of a rule. Notwithstanding the above provision, the Director may withdraw a proposal voluntarily upon a determination that available information and data do not support the proposal.

(e) *Effective date of the final rule.* Final rules shall become effective not less than 30 days after their publication in the FEDERAL REGISTER except as otherwise provided for good cause found and published with the rule. A final rule shall become effective no sooner than 60 days after all of the following have occurred: (1) The last public meeting or hearing on the proposal, (2) general notice of the proposal was published in the FEDERAL REGISTER, and (3) notice was given to the general local governments and a summary published in a newspaper of local circulation, if Critical Habitat was part of the proposal.

[45 FR 13022, Feb. 27, 1980; 45 FR 64195, Sept. 29, 1980]

§ 424.19 Emergency rules.

Sections 424.16, 424.17, and 424.18 notwithstanding, the Director may by regulation take any action described in § 424.10 if such a measure is warranted by the development of a significant risk to the well being of a species of fish or wildlife or plant. Such rules shall, at the discretion of the Director, be effective immediately on publication in the FEDERAL REGISTER. No such action that applies to resident species will be taken until the Director has notified the Governor of the State(s) within which such species is then known to occur. At the time of publication in the FEDERAL REGISTER of the emergency rule, the Director shall give detailed reasons why the rule is necessary. An emergency rule shall cease to have force and effect after 240 days unless the procedures described in §§424.16, 424.17 (where appropriate), and 424.18 have been complied with during that period. If at any time after issuing an emergency regulation the Director determines, on the basis of the best scientific and commercial data available to him, that substantial evidence does not exist to warrant such regulations, he shall withdraw it.

§ 424.20 Periodic review.

At least once every five years the Director shall conduct a review of each listed species to determine whether it should be removed from the list, be changed from an Endangered to a Threatened status, or be changed from a Threatened to an Endangered status. Announcement of which species are under active review will be published in the FEDERAL REGISTER. Notwithstanding this section's provisions, the Director may review any species at any time based upon a petition (see § 424.14) or other data available to the Service.

[45 FR 13022, Feb. 27, 1980; 45 FR 64195, Sept. 29, 1980]

SUBCHAPTER B—[RESERVED]

SUBCHAPTER C—ENDANGERED SPECIES EXEMPTION PROCESS

PART 450—GENERAL PROVISIONS

§ 450.01 Definitions.

The following definitions apply to terms used in this subchapter.

(1) "Act" means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531, *et seq.*

(2) "Agency action" means all actions of any kind authorized, funded or carried out, in whole or in part by Federal agencies.

(3) "Alternative courses of action" means all reasonable alternatives, including both no action and alternatives extending beyond original project objectives and acting agency jurisdiction.

(4) "Benefits" means all benefits of an agency action, both tangible and intangible, including but not limited to economic, environmental and cultural benefits.

(5) "Biological assessment" means the report prepared pursuant to section 7(c) of the Act, 16 U.S.C. 1536(c).

(6) "Biological opinion" means the written statement prepared pursuant to section 7(b) of the Act, 16 U.S.C. 1536(b).

(7) "Chairman" means the Chairman of the Endangered Species Committee, who is the Secretary of the Interior.

(8) "Committee" means the Endangered Species Committee established pursuant to section 7(e) of the Act, 16 U.S.C. 1536(e).

(9) "Critical Habitat" refers to those areas listed as Critical Habitat in 50 CFR Parts 17 and 226.

(10) "Destruction or adverse modification" is defined at 50 CFR 402.02.

(11) "Federal agency" means any department, agency or instrumentality of the United States.

(12) "Irresolvable conflict" means, with respect to any action authorized, funded, or carried out by a Federal agency, a set of circumstances under which, after consultation as required in section 7(a)(2) of the Act, completion of such action would violate section 7(a)(2).

(13) "Jeopardize the continued existence of" is defined at 50 CFR 402.02.

(14) "Mitigation and enhancement measures" means measures, including live propagation, transplantation and habitat acquisition and improvement, necessary and appropriate (i) to minimize the adverse effects of a proposed action on listed species or their critical habitats and/or (ii) to improve the conservation status of the species beyond that which would occur without the action. The measures must be likely to protect the listed species or the critical habitat, and be reasonable in their cost, the availability of the technology required to make them effective, and other considerations deemed relevant by the Committee.

(15) "Permit or license applicant" means any person whose application to an agency for a permit or license has been denied primarily because of the application of section 7(a)(2) of the Act, 16 U.S.C. 1536(a)(2).

(16) "Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any public body or officer, employee, agent, department, or instrumentality of the Federal government, of any State or political subdivision thereof, or of any foreign government.

(17) "Proposed action" means the action proposed by the Federal agency or by a permit or license applicant, for which exemption is sought.

(18) "Secretary" means the Secretary of the Interior or the Secretary of Commerce, or his or her delegate, depending upon which Secretary has responsibility for the affected species as determined pursuant to 50 CFR 402.01.

(19) "Service" means the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

(20) "To the extent that such information is available to the applicant"

means all pertinent information the applicant has on the subject matter at the time the application is submitted, and all other pertinent information obtainable from the appropriate Federal agency pursuant to a Freedom of Information Act request.

(Endangered Species Act of 1979, 16 U.S.C. 1531, *et seq.*, as amended)

[45 FR 23357, Apr. 4, 1980]

PART 451—APPLICATION PROCEDURE

Sec.
451.01 Definitions.
451.02 Applications for exemptions.
451.03 Review boards.
451.04 Endangered Species Committee.

AUTHORITY: Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

SOURCE: 45 FR 23357, Apr. 4, 1980, unless otherwise noted.

§ 451.01 Definitions.

All definitions contained in 50 CFR 450.01 are applicable to this part.

§ 451.02 Applications for exemptions.

(a) *Scope.* This section prescribes the application procedures for applying for an exemption from the requirements of section 7(a)(2) of the Endangered Species Act, as amended.

(b) *Where to apply.* Applications should be made to the appropriate Secretary(ies) by writing:

(1) The Secretary, Attention: Endangered Species Committee, Room 4160, Department of the Interior, 18th and C Streets, N.W., Washington, D.C., 20240.

(2) The Secretary, Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20030.

(c) *Who may apply.* Applications for exemptions shall only be made by (1) a Federal agency, (2) the Governor of a State in which the proposed agency action may occur, or (3) a person who has received a final denial for the purposes of Chapter 7, Title 5, United States Code of an application to a Federal agency for a permit or license primarily because of section 7(a)(2) considerations.

(d) *When to apply.* (1) Except in the case of agency action involving a permit or license application, an application for an exemption must be submitted to the Secretary within 90 days following the termination of the consultation process.

(2) In the case of agency action involving a permit or license application, an application for an exemption must be submitted within 90 days after the date on which the Federal agency concerned takes final action, for purposes of Chapter 7 of Title 5, United States Code, with respect to such agency action.

(3) In either case, an application for exemption which otherwise meets the requirements of section 7(g) of the Act, 16 U.S.C. 1536(g), may be submitted within 90 days following the effective date of these regulations.

(e) *Contents of the application when submitted.* Exemption applicants must provide the following information at the time the application is submitted.

(1) Applicant's name, mailing address, and phone number, including the name and telephone number of an individual to be contacted regarding the application.

(2) If the applicant is a Federal agency:

(i) A comprehensive description of the proposed agency action.

(ii) In the case of a denial of a license or permit, a description of the permit or license sought from or by the Federal agency, including a statement of who in the Federal agency denied the permit or license and the grounds for the denial.

(iii) A description of all permit(s), license(s) or other legal requirement(s) which have been satisfied or obtained, or which must still be satisfied or obtained, before the proposed action can proceed.

(iv) A description of the consultation process carried out pursuant to section 7(a) of the Act.

(v) A copy of the biological assessment, if one was prepared.

(vi) A copy of the biological opinion. If the biological opinion was issued before the effective date of these regulations, a statement by the agency which issued such opinion that it has reviewed the opinion since the effective date of these regulations and has found it valid and sufficient under the Act.

(vii) A description of each alternative to the proposed action considered by the Federal agency.

(viii) A statement describing why the proposed agency action cannot be altered or modifed to avoid jeopardizing the identified endangered species, threatened species or critical habitat(s).

(ix) A list of resources committed by the agency to the proposed action subsequent to the initiation of consultation.

(3) If the applicant is a permit or license applicant:

(i) A comprehensive description of the applicant's proposed action.

(ii) A description of the permit or license sought from the Federal agency, including a statement of who in the Federal agency denied the permit or license and the grounds for the denial.

(iii) A description of all permit(s), license(s) or other legal requirement(s) which have been satisfied or obtained, or which must still be satisfied or obtained, before it can proceed with the proposed action.

(iv) A copy of the permit or license denial.

(v) A copy of the biological assessment, if one was prepared.

(vi) A copy of the biological opinion. If the biological opinion was issued before the effective date of these regulations, a statement by the agency which issued such opinion that it has reviewed the opinion since the effective date of these regulations, and found it valid and sufficient under the Act.

(vii) A description of the consultation process carried out pursuant to section 7(a) of the Act, to the extent that such information is available to the applicant.

(viii) A description of each alternative to the proposed action considered by the applicant, and to the extent that such information is available to the applicant, a description of each alternative to the proposed action considered by the Federal agency.

(ix) A statement describing why the applicant's proposed action cannot be altered or modified to avoid jeopardizing the endangered species, threatened species or critical habitat(s).

(x) A list of resources committed to the proposed action by the permit or license applicant subsequent to the initiation of consultation.

(4) If the applicant is the Governor of a State in which the proposed agency action may occur:

(i) A comprehensive description of the proposed agency action.

(ii) A copy of the biological assessment, if one was prepared.

(iii) A copy of the biological opinion. If the biological opinion was issued before the effective date of these regulations, a statement by the agency which issued such opinion that it has reviewed the opinion since the effective date of these regulations and has found it valid and sufficient under the Act.

(iv) A description of the consultation process carried out pursuant to section 7(a) of the Act, to the extent that such information is available to the Governor.

(v) A description of all alternatives considered by the Federal agency, to the extent that such information is available to the Governor.

(vi) A statement describing why the proposed Federal action cannot be altered or modified to avoid jeopardizing the identified endangered species, threatened species or critical habitat(s).

(vii) A list of resources committed to the proposed action subsequent to the initiation of consultation, to the extent that such information is available to the Governor.

(5) Each applicant, whether a Federal agency, permit or license applicant, or Governor, must also submit the following:

(i) A full statement of the nature and the extent of the benefits of the proposed action.

(ii) A full discussion of why the benefits of the proposed action clearly outweigh the benefits of each considered alternative course of action.

(iii) A full discussion of why none of the considered alternatives are reasonable and prudent.

(iv) A full statement explaining why the proposed action is in the public interest.

(v) A full explanation of why the action is of regional or national significance.

(vi) A full discussion of mitigation and enhancement measures proposed to be undertaken if an exemption is granted.

(f) *Additional information required from the applicant.* If the review board makes a positive finding on each of the threshold determinations set forth in section 7(g)(5) of the Act, the review board may require the applicant to submit further discussions of the information required by § 451.02 (e)(5)(ii), (iii), (iv), (v), and (vi).

(g) *Initial review of the application.* (1) Upon receiving the application, the Secretary shall review the contents thereof and consider whether the application complies with the requirements set forth in § 451.02 (c), (d) and (e).

(2) The Secretary shall reject an application within 10 days of receiving it if he determines that it does not comply with § 451.02 (c), (d) and (e). When the Secretary rejects an application, a review board will not be empaneled.

(3) If the Secretary does not reject the application within 10 days of receiving it, but if the Secretary determines that a serious question exists regarding the application's compliance with requirements set forth in § 451.02 (c), (d) or (e), he shall refer the issue to the review board for consideration at a pre-hearing conference within 30 days of empanelling. The review board shall reject the application if the review board finds that the application does not comply with § 451.02 (c) or (d) or (e).

(h) *Notification of the Secretary of State.* The Secretary will promptly transmit to the Secretary of State a copy of all applications submitted in accordance with § 451.02 of this part.

(i) *Public notification.* Upon receipt of an application for exemption, the Secretary shall promptly publish a notice in the FEDERAL REGISTER (1) announcing that an application has been filed, (2) stating the applicant's name, (3) briefly describing the proposed agency action and the result of the consultation process, (4) designating the place where copies of the application can be obtained and (5) specifying the name of the person to contact for further information. The Secretary will mail copies of the FEDERAL REGISTER notice to each member of the Committee.

§ 451.03 Review boards.

(a) *Scope.* This section contains provisions governing the relationship between the Secretary and review boards.

(b) *Appointment.* Review boards will be appointed as follows:

(1) A member appointed by the Secretary. One member of the review board will be appointed by the Secretary not later than 15 days after an application is submitted.

(2) A State member. (i) When one or more States are affected, the Secretary will notify the Governors of each affected State in writing and request them to recommend residents of the State(s) in which the agency action will be, or is being, carried out for appointment to the review board. Written recommendations of these Governors must be received by the Secretary within 10 days after receipt of notification. The Secretary will transmit the Govenor's recommendations to the President and will request the President to appoint, within 30 days after the application for exemption was submitted, a State resident from the State(s) in which the agency action will be, or is being carried out.

(ii) When no State is affected, the Secretary will submit to the President a list of individuals with expertise relevant to the application, and will request the President to appoint an individual to the review board within 30 days after the application for exemption was submitted.

(3) An Administrative Law Judge. The Secretary will request the Office of Personnel Management to appoint, within 30 days after the application is submitted, an Administrative Law Judge to serve on the review board.

(4) If biological opinions of both the Secretary of the Interior and the Secretary of Commerce indicate that an agency action would violate section 7(a)(2) of the Act, the Secretaries shall jointly convene a review board to

consider any application for exemption filed with respect to such agency action.

(c) *Submission of application to the review board.* Following appointment of all members of a review board under § 451.03(b), the Secretary will submit a copy of the exemption application to each member.

(d) *Secretary's views.* Within 60 days after receiving an exemption application in accordance with § 451.02, the Secretary shall (unless a longer time is agreed to with the exemption application) submit his views on the application to the review board in writing.

§ 451.04 Endangered Species Committee.

(a) *Scope.* This section contains provisions governing the relationship between the Secretary and the Endangered Species Committee.

(b) *Appointment of State member.* (1) Concurrently with notification under § 451.03(b)(2)(A), the Secretary will request the Governors of each affected State to recommend individuals to be appointed to the Endangered Species Committee. Written recommendations of these Governors must be received by the Secretary within 10 days of receipt of notification. The Secretary will transmit the Governors' recommendations to the President and will request that the President appoint a State resident to the Endangered Species Committee from each affected State, within 30 days after the application for exemption was submitted.

(2) When no State is affected, the Secretary will submit to the President a list of individuals with expertise relevant to the application and will request the President to appoint an individual to the Endangered Species Committee on or before 30 days after the application for exemption was submitted.

PART 452—ENDANGERED SPECIES REVIEW BOARDS

Sec.
452.01 Purpose and scope.
452.02 Definitions.
452.03 Threshold review and determinations.
452.04 Preparation and submission of the information report.
452.05 Review board hearings.
452.06 Other meetings.
452.07 Open meetings and records.
452.08 Parties and intervenors.
452.09 Separation of functions and ex parte communications.
452.10 Additional review board powers.

Authority: Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

Source: 45 FR 23359, Apr. 4, 1980, unless otherwise noted.

§ 452.01 Purpose and scope.

This part prescribes the procedures to be used by endangered species review boards when examining applications for exemption from section 7(a)(2) of the Endangered Species Act.

§ 452.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 452.03 Threshold review and determinations.

(a) *Initiation of review.* Upon receiving an exemption application, a review board shall promptly initiate its review of the application.

(b) *Notice.* Upon receiving an exemption application, a review board shall promptly publish a notice in the Federal Register containing: (1) A brief description of the exemption application; (2) the time and place for parties to file written submissions; (3) a date by which all motions to intervene must be filed; and (4) the time, place and location of planned review board meetings or hearings on its threshold determinations.

(c) *Threshold determinations.* Within 60 days after its appointment, or a longer time agreed upon between the exemption applicant and the Secretary, the review board shall conclude its review and, by majority vote, determine:

(1) Whether any required biological assessment was conducted;

(2) Whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative which would avoid

jeopardizing the continued existence of an endangered or threatened species or result in the adverse modification or destruction of a critical habitat;

(3) Whether the Federal agency and permit or license applicant, if any, have carried out consultation responsibilities in good faith and have made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed action which would not violate section 7(a)(2) of the Act; and

(4) Whether there is an irresolvable conflict. In making this determination, the review board will give considerable deference to the findings reached during consultation by the acting agency and the appropriate Service. The review board will find that an irresolvable conflict exists if: The biological opinion is based on the best available commercial and scientific data and, based on that data, there has been no clear error in judgment on the question of jeopardy to the continued existence of the endangered or threatened species at issue or adverse modification or destruction of the critical habitat at issue.

(d) *Burden of proof.* The exemption applicant has the burden of proof on its position on the threshold determinations.

(e) *Negative finding.* If a review board makes a negative finding on any threshold determination, the review board shall notify the exemption applicant and all other parties in writing of its finding and grounds therefor. The exemption process shall terminate when the applicant receives such written notice. A negative finding by the review board shall constitute final agency action for purposes of judicial review under Chapter 7 of Title 5 of the United States Code. In the event of a negative finding by a review board on the issue of irresolvable conflict, the acting agency and the appropriate Service will reinitiate consultation. A finding of no irresolvable conflict is not to be construed as an exemption and does not absolve the Federal agency of its obligations to comply with section 7(a)(2) of the Act. If the deficiency that resulted in the negative determination(s) is subsequently corrected, a new application may be made to the Secretary.

(f) *Positive finding.* If the review board makes a positive finding on each of the threshold determinations, it shall notify the exemption applicant and all other parties in writing that the application qualifies for consideration by the Endangered Species Committee.

(g) *Secretary of State opinion.* The review board process shall terminate immediately if the Secretary of State, pursuant to his obligations under section 7(i) of the Act, certifies in writing to the Committee that granting an exemption and carrying out the proposed action would violate an international treaty obligation or other international obligation of the United States.

§ 452.04 Preparation and submission of the information report.

(a) *Preparation of the report.* If the review board has made a positive finding on each of the threshold determinations, it shall proceed to gather information according to procedures set out in 50 CFR 452.05 through 452.07 and prepare a report for the Endangered Species Committee;

(1) Discussing the availability of reasonable and prudent alternatives to the proposed action;

(2) Discussing the nature and extent of the benefits of the proposed action;

(3) Discussing the nature and extent of the benefits of alternative courses of action consistent with conserving the species or the critical habitat;

(4) Summarizing whether the proposed action is of national or regional significance;

(5) Summarizing whether the proposed action is in the public interest; and

(6) Discussing appropriate and reasonable mitigation and enhancement measures which should be considered by the Committee in granting an exemption.

(b) *Submission of report.* The review board shall submit its report and the record of its proceedings to the Committee within 180 days after making its threshold determinations.

(c) *Applicant responsibility.* In review board proceedings conducted pursuant to this section, the exemption applicant has the burden of going forward with evidence concerning the criteria for exemption.

§ 452.05 Review board hearings.

(a) *Hearings.* (1) A review board may hold such hearings as it determines are necessary in making its threshold determinations. If the issue of irresolvable conflict has previously been the subject of a hearing required to be conducted under 5 U.S.C. 554, 556, and 557, however, the review board's determination of irresolvable conflict shall be based solely on a review of the record, unless the review board determines intervening or unusual circumstances require that the record be supplemented.

(2) A hearing shall be held to aid the review board in preparing its information report under 50 CFR 452.04.

(b) *Prehearing conferences.* (1) The review board may, on its own motion or the motion of a party or intervenor, hold a prehearing conference to consider: (i) The possibility of obtaining stipulations, admissions of fact or law and agreement to the introduction of documents; (ii) the limitation of the number of witnesses; (iii) questions of law which may bear upon the course of the hearings; (iv) prehearing motions, including motions for discovery; and (v) any other matter which may aid in the disposition of the proceedings.

(2) If time permits and if necessary to materially clarify the issues raised at the prehearing conference, the review board shall issue a statement of the actions taken at the conference and the agreements made. Such statement shall control the subsequent course of the hearing unless modified for good cause by a subsequent statement.

(c) *Notice of hearings.* Unless announced in the notice published upon receipt of an exemption application pursuant to 50 CFR 452.03(b), review board hearings and prehearing conferences will be announced by a notice in the FEDERAL REGISTER stating: (1) The time, place and nature of the hearing or prehearing conference; and (2) the matters of fact and law to be considered. Such notices will ordinarily be published at least 15 days before the scheduled hearing.

(d) *Conduct of Hearings*—(1) *General conduct.* To the extent practicable within the time required for action by the review board, and except to the extent inconsistent with the requirements of section 7(g) of the Endangered Species Act, the conduct of all review board hearings shall be in accordance with 5 U.S.C. 554, 555 and 556 (other than section (b)(3) of section 556).

(2) *Presence of members.* Absent unforeseen circumstances, the review board members shall be physically present during the hearings.

(3) *Evidence*—(i) *Admissibility.* Relevant, material, and reliable evidence shall be admitted. Immaterial, irrelevant, unreliable, or unduly repetitious parts of an admissible document may be segregated and excluded so far as practicable.

(ii) *Official notice.* When a review board finding rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted to any party making a timely motion.

(4) *Motions, objections, rebuttal and cross-examination.* Motions and objections may be filed with the review board, rebuttal evidence may be submitted, and cross-examination may be conducted, as required for a full and true disclosure of the facts, by parties, witnesses under subpena, and their respective counsel.

(i) *Objections.* Objections to evidence shall be timely, and the party making them may be required to state briefly the grounds relied upon.

(ii) *Offers of proof.* When an objection is sustained, the examining party may make a specific offer of proof and the review board may receive the evidence in full. Rejected exhibits, adequately marked for identification, shall be retained in the record for consideration by any reviewing authority.

(iii) *Motions.* Motions and petitions shall state the relief sought, the basis for relief and the authority relied upon. If made before or after the hearing itself, these matters shall be in writing and shall be filed and served on all parties. If made at the hearing, they may be stated and responded to orally, but the review board may require that they be reduced to writing. Oral argument on motions and deadlines by which to file responses to written motions will be at the discretion of the review board.

§ 452.06 Other meetings.

(a) In addition to hearings and prehearing conferences held pursuant to § 452.05, a review board may hold such other meetings as it determines are necessary.

(b) Unless announced in the notice published upon receipt of an exemption application pursuant to 50 CFR 452.02(b), such meetings shall be announced by a notice in the FEDERAL REGISTER stating: (1) The time and place of the meeting; and (2) the nature or purpose of the meeting. Such notices will ordinarily be published at least 15 days before the scheduled meeting.

§ 452.07 Open meetings and records.

All review board meetings and hearings and all review board records shall be open to the public.

§ 452.08 Parties and intervenors.

(a) *Parties.* The parties shall consist of the exemption applicant, the Federal agency responsible for the agency action in question, the Service, and intervenors whose motions to intervene have been granted.

(b) *Intervenors.* (1) A review board shall provide an opportunity for intervention in its proceedings. A motion to intervene must state the petitioner's name and address, identify its representative, if any, set forth the interest of the petitioner in the proceeding and show that the petitioner's participation would assist in the determination of the issues in question.

(2) A review board shall grant leave to intervene if it determines that an intervenor's participation would contribute to the fair determination of issues before the board. In making this determination, the review board may consider whether an intervenor represents a point of view not adequately represented by a party or another intervenor.

§ 452.09 Separation of functions and ex parte communications.

(a) *Separation of Functions.* A review board and its members shall not:

(1) Be responsible for or subject to the supervision or direction of any person engaged in the performance of the endangered species consultation at issue;

(2) Allow an agency employee or agent engaged in the endangered species consultation at issue or a factually related matter to participate or advise in a determination under this part except as a witness or counsel in public proceedings.

(b) *Ex Parte Communications.* As provided in 5 U.S.C. 557(d), review board members and staff shall not communicate with parties or their respective counsel concerning the merits of issues before the review board without reasonable prior public notice and opportunity to participate.

§ 452.10 Additional review board powers.

(a) *Request assistance.* (1) The review board may request and receive:

(i) Administrative support services, on a reimbursable basis, from the Administrator of the General Services Administration;

(ii) Personnel, from any Federal agency, on a nonreimbursable basis, to assist the review board in carrying out its duties.

(2) The review board should minimize reliance on personnel provided on a reimbursable basis by the GSA and maximize use of personnel provided by heads of Federal agencies on a nonreimbursable basis.

(b) *Use of the mails.* A review board may use the United States mails in the same manner and under the same conditions as a Federal agency.

(c) *Request information.* Subject to the Privacy Act of 1974, a review board may request of any person information necessary to carry out review board duties. Any Federal agency or the exemption applicant shall furnish such information to the review board.

(d) *Request subpenas.* A review board may request the Committee to issue subpenas for the attendance and testimony of such witnesses, and the production of such relevant papers, books, and documents as are necessary for consideration of an exemption application.

(e) *Take depositions.* A review board may take depositions or have depositions taken as necessary to carry out its functions.

(f) *Delegate functions.* A review board may delegate its functions under paragraphs (a) through (e) of this section to any member.

(g) *Consolidated and joint proceedings.* (1) When two or more exemption applications are referred to the same review board, the board may consolidate proceedings on the applications, if consolidation would expedite or simplify consideration of the issues.

(2) When two or more review boards are considering related exemption applications, the review boards may conduct joint proceedings, if joint proceedings would expedite or simplify consideration of the issues.

PART 453—ENDANGERED SPECIES COMMITTEE

Sec.
453.01 Purpose.
453.02 Definitions.
453.03 Committee review and final determinations.
453.04 Committee information gathering.
453.05 Committee meetings.
453.06 Additional committee powers.

AUTHORITY: Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., as amended.

SOURCE: 45 FR 23361, Apr. 4, 1980, unless otherwise noted.

§ 453.01 Purpose.

This part prescribes the procedures to be used by the Endangered Species Committee when examining applications for exemption from section 7(a)(2) of the Endangered Species Act of 1973, as amended.

§ 453.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 453.03 Committee review and final determinations.

(a) *Initiation.* Upon receiving a review board's report and record, the Committee shall promptly initiate its review of the application.

(b) *Final determinations.* Within 90 days of receiving a review board's report and record, the Committee shall grant an exemption from the requirements of section 7(a)(2) of the Act for an agency action if, by a vote of not less than five of its members voting in person:

(1) It determines on the record, based on the report of the review board and on such other testimony or evidence as it may receive, that—

(i) There are no reasonable and prudent alternatives to the proposed action;

(ii) The benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest; and

(iii) The action is of regional or national significance; and

(2) It establishes such reasonable mitigation and enhancement measures as are necessary and appropriate to minimize the adverse effects of the proposed action upon the endangered species, threatened species, or critical habitat concerned.

(c) *Decision and order.* The Committee's final determinations shall be written and shall be based on the whole public record of testimony, evidence and other written comments submitted to the Committee. If the Committee determines that an exemption should be granted, the Committee shall issue an order granting the exemption and specifying required mitigation and enhancement measures. The Committee shall publish its decisions in the FEDERAL REGISTER as soon as practicable.

(d) *Permanent exemptions.* Under section 7(h)(2) of the Act, an exemption granted by the Committee shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action (i) regardless of whether the species was identified in the biological assessment, and (ii) only if a biological assessment has been conducted under section 7(c) of the Act with respect to such agency action. An exemption shall be permanent unless (A) the Secretary finds, based on the best scientific and commercial data availble, that such exemption would result in the extinction of a species that was not the subject of consultation under section 7(a)(2) of the Act or was not identified in any biological assessment conducted under section 7(c) of the Act, and (B) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent. If the Secretary makes a finding that the exemption would result in the extinction of a species, as specified above, the Committee shall meet with respect to the matter within 30 days after the date of the finding. During the 60 day period following the Secretary's determination, the holder of the exemption shall refrain from any action which would result in extinction of the species.

(e) *Review by the Secretary of Defense.* If the Secretary of Defense finds in writing that an exemption for the agency action is necessary for reasons of national security, the Committee shall grant the exemption notwithstanding any other provision in this part.

§ 453.04 Committee information gathering.

(a) *Written submissions.* When the Chairman or four Committee members decide that written submissions are necessary to enable the Committee to make its final determinations, the Chairman shall publish a notice in the FEDERAL REGISTER inviting written submissions from interested persons. The notice shall include: (1) The address to which such submissions are to be sent; (2) the deadline for such submissions; and (3) a statement of the type of information needed.

(b) *Information gathering proceedings.* (1) When the Chairman or four Committee members decide that oral presentations are necessary to enable the Committee to make its final determinations, an information gathering proceeding shall be held.

(2) The information gathering proceeding shall be conducted by (i) the Committee or (ii) a member of the Committee or other person, designated by the Chairman or by four members of the Committee.

(3) *Notice.* The Chairman shall publish in the FEDERAL REGISTER a general notice of an information gathering proceeding, stating: (i) The time, place and nature of the information gathering proceeding; and (ii) the type of information needed. The FEDERAL REGISTER notice shall be published at least 15 days prior to the proceeding.

(4) *Procedure.* The information gathering proceedings shall be open to the public and conducted in an informal manner. All information relevant to the Committee's final determinations shall be admissible, subject to the imposition of reasonable time limitations on oral testimony.

(5) *Transcript.* Information gathering proceedings will be recorded verbatim and a transcript thereof will be available for public inspection. Any person may obtain a copy of the transcript upon payment of the actual cost of duplication.

§ 453.05 Committee meetings.

(a) The Committee shall meet at the call of the Chairman or five of its members.

(b) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that in no case shall any representative be considered in determining the existence of a quorum for the transaction of a Committee function which involves a vote by the Committee on the Committee's final determinations.

(c) All meetings and records of the Committee shall be open to the public.

(d) The Chairman shall publish a notice of all Committee meetings in the FEDERAL REGISTER. The notice will ordinarily be published at least 15 days prior to the meeting.

§ 453.06 Additional committee powers.

(a) *Request and receive assistance.* The Committee may request and receive:

(1) Administrative support services on a reimbursable basis, from the Administrator of the General Services Administration; and

(2) Personnel from any Federal agency on a nonreimbursable basis, to assist the Committee in carrying out its duties.

(b) *Use of the mails.* The Committee may use the mails in the same manner and under the same conditions as a Federal agency.

(c) *Secure information.* Subject to the Privacy Act, the Committee may secure information directly from any Federal agency when necessary to enable it to carry out its duties.

(d) *Subpenas.* (1) For the purpose of obtaining information necessary for the consideration of an application for an exemption, the Committee may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents;

(2) The Chairman shall receive review board subpena requests and may issue the subpenas on behalf of the Committee to aid the review board.

(e) *Rules and orders.* The Committee may issue such rules and orders as are necessary to carry out its duties.

(f) *Delegate authority.* The Committee may delegate its authority under paragraphs (a) through (d) of this section to any member.

CHAPTER V—MARINE MAMMAL COMMISSION

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PART 501—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

501.1 Purpose and scope.
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501.9 Fees.

AUTHORITY: Sec. 3, Privacy Act of 1974 (5 U.S.C. 552a(f)).

SOURCE: 40 FR 49276, Oct. 21, 1975, unless otherwise noted.

§ 501.1 Purpose and scope.

(a) *Purpose.* The purpose of these rules is to fulfill the responsibilities of the Marine Mammal Commission (the "Commission") under section 3 of the Privacy Act of 1974, 5 U.S.C. 552a(f) (the "Act") by establishing procedures whereby an individual will be notified if any system of records maintained by the Commission contains a record pertaining to him or her; by defining the times and places at which records will be made available and the identification requirements which must be met by any individual requesting access to them; by establishing procedures for disclosure to an individual, on request, of any record pertaining to him or her; and by establishing procedures for processing, reviewing, and making a final determination on requests of individuals to correct or amend a record pertaining to him or her, including a provision for administrative appeal of initial adverse determinations on such requests. These rules are promulgated with particular attention to the purposes and goals of the Act, and in accordance therewith provide for relative ease of access to records pertaining to an individual, and for maintenance by the Commission of only those records which are current, accurate, necessary, relevant and complete with respect to the purposes for which they were collected.

(b) *Scope.* These rules apply only to "record" contained in "systems of records," defined by the Act as follows:

> The term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;
>
> The term "system of records" means of group of any record under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Notices with respect to the systems maintained by the Commission have been published in the FEDERAL REGISTER, as required by the Act. These rules pertain only to the systems of records disclosed in such notices, and to any systems that may become the subject of a notice at any time in the future.

(c) Nothing in these rules shall be construed as pertaining to requests made under the Freedom of Information Act, 5 U.S.C. 552.

§ 501.2 Definitions.

(a) As used in this part:

(1) The term "Act" means the Privacy Act of 1974, 5 U.S.C. 552a.

(2) The term "Commission" means the Marine Mammal Commission.

(3) The term "Director" means the Executive Director of the Marine Mammal Commission.

(4) The term "Privacy Officer" means an individual designated by the Director to receive all requests regarding the existence of records, requests for access and requests for correction or amendment; to review and make initial determinations regarding all such requests; and to provide assistance to any individual wishing to exercise his or her rights under the Act.

(b) Other terms shall be used in this part in accordance with the definitions contained in section 3 of the Privacy Act of 1974, 5 U.S.C. 552a(a).

§ 501.3 Procedure for responding to requests regarding the existence of records pertaining to an individual.

Any individual may submit a request to be notified whether a system of records, with respect to which the Commission has published a notice in the FEDERAL REGISTER, contains a record pertaining to him or her. Requests may be made in writing to the Privacy Officer or by appearing in person at the Commission offices located at 1625 I Street, NW., Room 307, Washington, D.C. 20006 between the hours of 9:00 a.m. and 5:00 p.m. on any working day. Systems of records that are the subject of a request should be identified by reference to the system name designated in the Notice of Systems of Records published in the FEDERAL REGISTER. In the event a system name is not known to the individual, a general request will suffice if it indicates reasons for the belief that a record pertaining to the named individual is maintained by the Commission. Receipt of inquiries submitted by mail will be acknowledged within 10 days of receipt (excluding Saturdays, Sundays, and legal public holidays) unless a response can also be prepared and forwarded to the individual within that time.

§ 501.4 Requests for access—times, places and requirements for identification of individuals.

Requests for access to a system of records pertaining to any individual may be made by that individual by mail addressed to the Privacy Officer, or by submitting a written request in person at the Commission offices located at 1625 I Street, NW., Room 307, Washington, D.C. 20006, between the hours of 9 a.m. and 5 p.m. on any working day. Assistance in gaining access under this section, securing an amendment or correction under § 501.6, or preparing an appeal under §§ 501.5 (d) and 501.8 shall be provided by the Privacy Officer on request directed to the Commission office. An individual appearing in person at the Commission offices will be granted immediate access to any records to which that individual is entitled under the Act upon satisfactory proof of identity by means of a document bearing the individual's photograph or signature. For requests made by mail, identification of the individual shall be adequate if established by means of submitting a certificate of a notary public, or equivalent officer empowered to administer oaths, substantially in accord with the following:

City of ———— County of ————:
ss (Name of individual) who affixed (his) (her) signature below in my presence, came before me, a (Title), in the aforesaid County and State, this ——— day of ———, 19—, and established (his)(her) identity to my satisfaction.
My Commission expires —————.

The certificate shall not be required, however, for written requests pertaining to non-sensitive information or to information which would be required to be made available under the Freedom of Information Act. The Privacy Officer shall determine the adequacy of any proof of identity offered by an individual.

[41 FR 5, Jan. 2, 1976]

§ 501.5 Disclosure of requested information.

(a) Upon request and satisfactory proof of identity, an individual appearing at the Commission offices shall be given immediate access to and permission to review any record, contained in a system of records, pertaining to him or her, shall be allowed to have a person of his/her choosing accompany him/her, and shall be given a copy of all or any portion of the record. The individual to which access is granted shall be required to sign a written statement authorizing the presence of the person who accompanies him or her, and authorizing discussion of his or her record in the presence of the accompanying person.

(b) Requests made by mail to the Privacy Officer at the Commission offices will be acknowledged within 10 days from date of receipt (excluding Saturdays, Sundays, and legal public holidays). This acknowledgement shall advise the individual whether access to the record will be granted and, if access is granted, copies of such records shall be enclosed.

(c) If the Privacy Officer initially determines to deny access to all or any portion of a record, notice of denial shall be given to the individual in writing, within 30 days (excluding Saturdays, Sundays and holidays) after acknowledgement is given, and shall include the following:

(1) The precise record to which access is being denied;

(2) The reason for denial, including a citation to the appropriate provisions of the Act and of these Rules;

(3) A statement that the denial may be appealed to the Director;

(4) A statement of what steps must be taken to perfect an appeal to the Director; and,

(5) A statement that the individual has a right to judicial review under 5 U.S.C. 552a(g)(1) of any final denial issued by the Director.

(d) Administrative appeal of an initial denial, in whole or in part, of any request for access to a record, shall be available. An individual may appeal by submitting to the Director a written request for reconsideration stating therein specific reasons for reversal which address directly the reasons for denial stated in the initial notice of denial. If access is denied on appeal, a final notice of denial shall be sent to the individual within 30 days (excluding Saturdays, Sundays and holidays), and shall state with particularity the grounds for rejecting all reasons for reversal submitted by the individual. The denial shall then be deemed final for purposes of obtaining judicial review.

[40 FR 49276, Oct. 21, 1975, as amended at 41 FR 5, Jan. 2, 1976]

§ 501.6 Requests for correction or amendment of a record.

(a) Any individual may request the correction or amendment of a record pertaining to him or her in writing addressed to the Privacy Officer at the Commission offices. Verification of identity required for such requests shall be the same as that specified in § 501.4 of this part with respect to requests for access. Records sought to be amended must be identified with as much specificity as is practicable under the circumstances of the request, and at a minimum, should refer to the system name designated in the Notice of System Records published in the FEDERAL REGISTER, the type of record in which the information thought to be improperly maintained or incorrect is contained, and the precise information that is the subject of the request (for example, system name, description of record, paragraph, sentence, line, words). Assistance in identifying a record, and in otherwise preparing a request, may be obtained by contacting the Privacy Officer at the Commission offices.

(b) A request should, in addition to identifying the individual and the record sought to be amended or corrected, include:

(1) The specific wording or other information to be deleted, if any;

(2) The specific wording or other information to be inserted, if any, and the exact place in the record at which it is to be inserted, and,

(3) A statement of the basis for the requested amendment or correction (e.g. that the record is inaccurate, unnecessary, irrelevant, untimely, or incomplete), together with supporting documents, if any, which substantiate the statement.

§ 501.7 Agency review of requests for amendment or correction of a record.

(a) Where possible, each request for amendment or correction shall be reviewed, and a determination on the request made, by the Privacy Officer within 10 days of receipt (excluding Saturdays, Sundays and holidays). Requests shall be acknowledged within that period where insufficient information has been provided to enable action to be taken. An acknowledgement shall inform the individual making the request of the estimated time within which a disposition of the request is expected to be made, and shall prescribe such further information as may be necessary to process the request. The request shall be granted, or an initial decision to deny shall be made, within ten days of receipt of all information specified in the acknowledgement (excluding Saturdays, Sundays and holidays).

(b) Within 30 days (excluding Saturdays, Sundays and holidays) after arriving at a decision on a request, the Privacy Officer shall either:

(1) Make the requested amendment or correction, in whole or in part, and advise the individual in writing of such action; or,

(2) Advise the individual in writing that the request has been initially denied, in whole or in part, stating, with respect to those portions denied;

(i) The date of the denial;

(ii) The reasons for the denial, including a citation to an appropriate section of the Act and these Rules; and,

(iii) The right of the individual to prosecute an appeal and to obtain judicial review should a final denial result from the appeal.

(c) In reviewing a request for amendment or correction of a record, the Privacy Officer shall consider the following criteria:

(1) The sufficiency of the evidence submitted by the individual;

(2) The factual accuracy of the information sought to be amended or corrected;

(3) the relevance and necessity of the information sought to be amended or corrected in terms of the purposes for which it was collected;

(4) The timeliness and currency of the information sought to be amended or corrected in terms of the purposes for which it was collected;

(5) The completeness of the information sought to be amended or corrected in terms of the purposes for which it was collected;

(6) The degree of possibility that denial of the request could unfairly result in determinations adverse to the individual;

(7) The character of the record sought to be corrected or amended; and,

(8) The propriety and feasibility of complying with the specific means of correction or amendment requested by the individual. If an amendment or correction is otherwise permissible under the Act and other relevant statutes, a request shall be denied only if the individual has failed to establish, by a preponderance of the evidence, the propriety of the amendment or correction in light of these criteria.

[40 FR 49276, Oct. 21, 1975, as amended at 41 FR 5, Jan. 2, 1976]

§ 501.8 Appeal of initial denial of a request for amendment or correction.

(a) The initial denial of a request for amendment or correction may be appealed by submitting to the Director the following appeal papers:

(1) A copy of the original request for amendment or correction;

(2) A copy of the initial denial; and

(3) A precise statement of the reasons for the individual's belief that the denial is in error, referring specifically to the criteria contained in § 501.7(c)(1) through (8).

The appeal must be signed by the individual. While these papers normally will constitute the entire Record on Appeal, the Director may add additional information, from sources other than the individual, where necessary to facilitate a final determination. Any such additional information added to the record shall promptly be disclosed to the individual to the greatest extent possible, and an opportunity for comment thereon shall be afforded prior to the final determination. Appeals should be submitted to the Director within 90 days after the date of the initial denial.

(b) The Director shall issue a final determination on appeal within thirty days (excluding Saturdays, Sundays, and legal public holidays) from the date on which a completed Record on Appeal (including any additional information deemed necessary) is received. Review, and final determination by the Director, shall be based upon the criteria specified in § 501.7(c)(1) through (8).

(c) If the appeal is resolved favorably to the individual, the final determination shall specify the amendments or corrections to be made. Copies of the final determination shall be transmitted promptly to the individual and to the Privacy Officer. The Privacy Officer shall make the requested amendment or correction and advise the individual in writing of such action.

(d) If the appeal is denied, the final determination shall state, with particularity, the reasons for denial, including a citation to an appropriate section of the Act and of these Rules. The final determination shall be forwarded promptly to the individual, together with a notice which shall inform the individual of his or her right to submit to the Privacy Officer, for inclusion in the record, a concise statement of grounds for disagreement with the final determination. Receipt of any such statement shall be acknowledged by the Privacy Officer, and all subsequent and prior users of the record shall be provided copies of the statement. The notice shall also inform the individual of his or her right, under 5 U.S.C. 552a(g)(1), to obtain judicial review of the final determination.

[40 FR 49276, Oct. 21, 1975, as amended at 41 FR 5, Jan. 2, 1976]

§ 501.9 Fees.

A fee of $0.10 shall be charged for each copy of each page of a record made, by photocopy or similar process, at the request of an individual. No fee shall be charged for copies made at the initiative of the Commission incident to granting access to a record. A total copying fee of $2.00 or less may be waived by the Privacy Officer, but fees for all requests made contemporaneously by an individual shall be aggregated to determine the total fee.

[41 FR 5, Jan. 2, 1976]

PART 510—IMPLEMENTATION OF THE FEDERAL ADVISORY COMMITTEE ACT

Sec.

510.1 Purpose.
510.2 Scope.
510.3 Definitions.
510.4 Calling of meetings.
510.5 Notice of meetings.
510.6 Public participation.
510.7 Closed meetings.
510.8 Minutes.
510.9 Uniform pay guidelines.

Authority: Sec. 8(a), Federal Advisory Committee Act, 5 U.S.C. App. I.

Source: 41 FR 3306, Jan. 22, 1976, unless otherwise noted.

§ 510.1 Purpose.

The regulations prescribed in this part set forth the administrative guidelines and management controls for advisory committees reporting to the Marine Mammal Commission. These regulations are authorized by section 8(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I. Guidelines and controls are prescribed for calling of meetings, notice of meetings, public participation, closing of meetings, keeping of minutes, and compensation of committee members, their staff and consultants.

§ 510.2 Scope.

These regulations shall apply to the operation of advisory committees reporting to the agency.

§ 510.3 Definitions.

For the purposes of this part,

(a) The term "Act" means the Federal Advisory Committee Act, 5 U.S.C. App. I;

(b) The term "Chairperson" means each person selected to chair an advisory committee established by the Commission;

(c) The term "Commission" means the Marine Mammal Commission, established by 16 U.S.C. 1401(a);

(d) The term "committee" means any advisory committee reporting to the Commission; and

(e) The term "Designee" means the agency official designated by the Chairman of the Commission (1) to perform those functions specified by sections 10(e) and (f) of the Act, and (2) to perform such other responsibilities as are required by the Act and applicable regulations to be performed by the "agency head."

§ 510.4 Calling of meetings.

(a) No committee shall hold any meeting except with the advance approval of the Designee. Requests for approval may be made, and approval to hold meetings may be given orally or in writing, but if approval is given orally, the fact that approval has been given shall be stated in the public notice published pursuant to § 510.5 of these regulations.

(b) An agenda shall be submitted to, and must be approved by, the Designee in advance of each committee meeting, and that meeting shall be conducted in accordance with the approved agenda. The agenda shall list all matters to be considered at the meeting, and shall indicate when any part of the meeting will be closed to the public on the authority of exemptions contained in the Freedom of Information Act, 5 U.S.C. 552(b).

[41 FR 3306, Jan. 22, 1976; 41 FR 4020, Jan. 28, 1976]

§ 510.5 Notice of meetings.

(a) Notice of each committee meeting shall be timely published in the FEDERAL REGISTER. Publication shall be considered timely if made at least 15 days before the date of the meeting, except that shorter notice may be provided in emergency situations.

(b) The notice shall state the time, place, schedule and purposes of the committee meeting, and shall include, whenever it is available, a summary of the agenda. The notice shall indicate the approximate times at which any portion of the meeting will be closed to the public and shall include an explanation for the closing of any portion of the meeting pursuant to § 510.7.

§ 510.6 Public participation.

(a) All committee meetings, or portions of meetings, that are open to the public shall be held at a reasonable time and at a place that is reasonably accessible to the public. A meeting room shall be selected which, within the bounds of the resources and facilities available, affords space to accommodate all members of the public who reasonably could be expected to attend.

(b) Any member of the public shall be permitted to file a written statement with the committee, either by personally delivering a copy to the Chairperson, or by submitting the statement by mail to the Marine Mammal Commission Offices at the address indicated in the notice of meeting. Such statements should be received at least one week in advance of the scheduled meeting at which they are expected to be considered by the committee.

(c) Opportunities will ordinarily be afforded to interested persons to speak to agenda items during that portion of the open meeting during which that item is to be considered by the committee, subject to such reasonable time limits as the committee may establish, and consideration of the extent to which the committee has received the benefit of comments by interested persons, the complexity and the importance of the subject, the time constraints under which the meeting is to be conducted, the number of persons who wish to speak during the meeting, and the extent to which the statement provides the committee with information which has not previously been available and is relevant to its decision or other action on that subject. Interested persons may be required to serve reasonable notice of their intentions to speak so that the committee may assess whether procedures and scheduling for the meeting can be adjusted to accommodate large numbers of participants.

§ 510.7 Closed meetings.

(a) Whenever the committee seeks to have all or a portion of a meeting closed to the public on the basis of an exemption provided in 5 U.S.C. 552(b), the Chairperson shall notify the Designee at least 30 days before the scheduled date of the meeting. The notification shall be in writing and shall specify all the reasons for closing any part of the meeting.

(b) If, after consultation with the General Counsel of the Commission, the Designee finds the request to be warranted and in accordance with the policy of the Act, the request shall be granted. The determination of the Designee to grant any such request shall be in writing and shall state the specific reasons for closing all or a part of the meeting. Copies of the determination shall be made available to the public upon request.

§ 510.8 Minutes.

Detailed minutes shall be kept of each portion of each committee meeting. The minutes shall include: the time and place of the meeting; a list of the committee members and staff in attendance; a complete summary of matters discussed and conclusions reached; copies of all reports received, issued, or approved by the committee; a description of the extent to which the meeting was open to the public;

and a description of public participation, including a list of members of the public who presented oral or written statements and an estimate of the number of members of the public who attended the open sessions. The Chairperson shall certify to the accuracy of the minutes.

§ 510.9 Uniform pay guidelines.

(a) Compensation of members and staff of, and consultants to the Committee of Scientific Advisors on Marine Mammals is fixed in accordance with 16 U.S.C. 1401(e), 1403(b), and 1406.

(b) Compensation for members and staff of, and consultants to all advisory committees reporting to the Commission except the Committee of Scientific Advisors on Marine Mammals shall be fixed in accordance with guidelines established by the Director of the Office of Management and Budget pursuant to section 7(d) of the Act, 5 U.S.C. App. I.

PART 520—PUBLIC AVAILABILITY OF AGENCY MATERIALS

Sec.
520.1 Purpose.
520.2 Scope.
520.3 Definitions.
520.4 Availability of materials.
520.5 Administrative appeal.
520.6 Extension of time.
520.7 Fees.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 41 FR 3307, Jan. 22, 1976, unless otherwise noted.

§ 520.1 Purpose.

These regulations implement the provisions of the "Freedom of Information Act," 5 U.S.C. 552. They establish procedures under which the public may inspect and obtain copies of nonexempt material maintained by the Commission, provide for administrative appeal of initial determinations to deny requests for material, and prescribe uniform fees to be charged by the Commission to recover direct search and duplication costs.

§ 520.2 Scope.

(a) These regulations shall apply to all final opinions, including concurring and dissenting opinions, as well as orders, made by the Commission in the adjudication of cases; to all statements of policy and interpretations which have been adopted by the Commission and are not published in the FEDERAL REGISTER; to the Commission's administrative staff manuals and instructions to staff that affect a member of the public; and to any other Commission records reasonably described and requested by a person in accordance with these regulations—except to the extent that such material is exempt in accordance with paragraph (b) of this section.

(b) Requests for inspection and copies shall not be granted with respect to materials that are:

(1) (i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(ii) Are in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

§ 520.3 Definitions.

As used in these regulations:

(a) The term "Commission" means the Marine Mammal Commission;

(b) The term "Director" means the Executive Director of the Marine Mammal Commission;

(c) The term "exempt materials" means those materials described in § 520.2(b);

(d) The term "non-exempt materials" refers to all materials described in § 520.2(a), but not included in § 520.2(b); and

(e) The term "General Counsel" means the General Counsel of the Marine Mammal Commission.

§ 520.4 Availability of materials.

(a) All non-exempt materials shall be available for inspection during normal business hours at the Commission offices, 1625 I Street, NW., Room 307, Washington, D.C. Space shall be made available at that location for the use of any person who is granted permission to inspect such materials.

(b) Requests to inspect, and obtain copies of, any material maintained by the Commission may be made in person at the Commission offices, or submitted in writing to the Executive Director, Marine Mammal Commission, 1625 I St., NW., Room 307, Washington, D.C. 20006. Each request should include a reasonable description of the material being sought, and should contain sufficient detail to facilitate retrieval of the material without undue delay. The Commission staff shall assist to the extent practicable in identifying material that is imprecisely described by the person requesting such material.

(c) An initial determination whether, and to what extent, to grant each request shall be made by the General Counsel or his delegate within 10 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of that request. The person making the request shall be notified immediately of the determination made. In making such determinations, it shall first be considered whether the material requested is of a type described in § 520.2(a); if it is, the request shall be granted unless the material is exempted by § 520.2(b). If the material requested is not of a type described in § 520.2(a), or is the subject of one or more exemptions, the request shall be denied.

(d) If a determination is made to grant a request, the relevant material shall promptly be made available for inspection at the Commission offices. Copies of the material disclosed shall be furnished within a reasonable time after payment of the fee specified in § 520.7. Copies of less than 10 pages of material requested in person ordinarily will be furnished immediately following the determination to grant the request and payment of the fee. Larger numbers of copies may be furnished at the earliest convenience of the Commission staff, but must be furnished within a reasonable time following payment of the fee.

(e) Whenever required to prevent a clearly unwarranted invasion of personal privacy, the General Counsel or his delegate shall determine that identifying details shall be deleted from an opinion, statement of policy, interpretation, or staff manual or instruction to which access is granted or of which copies are furnished. Where portions of the requested material are exempt under § 520.2(b), and are reasonably segregable from the remainder of the material, those portions shall be excised from the material disclosed. Whenever details are deleted or portions are excised and not disclosed, the notification shall include the information specified in § 520.4(f).

(f) If a determination is made to deny a request, the notification shall include a statement of the reasons for such action, shall set forth the name and position of the person responsible for the denial, and shall advise the requester of the right, and the procedures required under § 520.5, to appeal the denial to the Director.

§ 520.5 Administrative appeal.

(a) An appeal to the Director of any denial, in whole or in part, of a request for access to and copies of material may be made by submission of a written request for reconsideration. Such requests must state specific reasons for reconsideration that address directly the grounds upon which the denial was based. Requests should be addressed to the Director at the Commission offices.

(b) The Director shall make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the request for reconsideration. The person making such a request shall immediately be notified by mail of the determination.

(c) If the initial denial is reversed by the Director, any material with which the reversal is concerned shall be made available for inspection, and copies shall be furnished, in accordance with § 520.4(d).

(d) If the denial is upheld, in whole or in part, the Director shall include in the notification a statement of the requester's right of judicial review under 5 U.S.C. 552(a)(4), and the names and positions of the persons responsible for the denial.

§ 520.6 Extensions of time.

(a) Whenever unusual circumstances exist, as set forth in § 520.6(b), the times within which determinations must be made by the General Counsel on requests for access (10 working days), and by the Director on requests for reconsideration (20 working days), may be extended by written notice to the requester. The notice shall set forth the reasons for such extension, and the date on which a determination is expected to be made. The maximum extension of time allowed under this section shall be 10 working days, but shall be utilized only to the extent reasonably necessary to the proper processing of the particular request.

(b) As used in this section, "unusual circumstances" shall mean:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Commission offices;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are the subject of a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

§ 520.7 Fees.

(a) The following standard charges for document search and duplication, based on the direct costs of such services, must be paid before access to, or copies of material will be granted under these regulations:

(1) Search: $4.00 per person-hour for clerical time; $8.00 per person-hour for professional or supervisory time;

(2) Duplication: $0.10 per page of photocopied material.

(b) The Commission shall furnish without charge, or at a reduced charge, copies of any material disclosed pursuant to these regulations, whenever the General Counsel or the Director determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

[41 FR 3307, Jan. 22, 1976; 41 FR 4020, Jan. 28, 1976]

PART 530—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

Sec.

530.1 Purpose.
530.2 Ensuring that environmental documents are actually considered in agency decision-making.
530.3 Typical classes of action.
530.4 Environmental information.

AUTHORITY: National Environmental Policy Act, Pub. L. 91-190; 42 U.S.C. 4321 et seq.

SOURCE: 44 FR 52837, Sept. 11, 1979, unless otherwise noted.

§ 530.1 Purpose.

The purpose of this part is to establish procedures which supplement the National Environmental Policy Act (NEPA) regulations and provide for the implementation of those provisions identified in section 1507.3(b) of the regulations which are applicable to the activities of the Commission in light of its statutory functions and responsibilities.

§ 530.2 Ensuring that environmental documents are actually considered in agency decision-making.

Section 1505.1 of the NEPA regulations contains requirements to ensure adequate consideration of environmental documents in agency decision-making. To implement these requirements, Commission officials shall:

(a) Consider all relevant environmental documents in evaluating proposals for agency actions;

(b) Ensure that all relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes;

(c) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating any proposal for action by the Commission which is likely to significantly affect the quality of the human environment; and

(d) Where an environmental impact statement (EIS) has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS. All Commission officials directly involved in developing, evaluating, and/or reaching decisions on proposed actions shall consider relevant environmental documents and comply with the applicable provisions of the NEPA process.

§ 530.3 Typical classes of action.

Section 1507.3(b)(2), in conjunction with section 1508.4, requires agencies to identify typical classes of action that warrant similar treatment under NEPA with respect to the preparation of EIS's or environmental assessments. As a general matter, the Commission's activities do not include actions for which EIS's or environmental assessments are required. Its activities involve:

(a) Consultation with and recommendations to other Federal agencies for actions relating to marine mammal protection and conservation for which an EIS or environmental assessment is either not required by the NEPA regulations or for which an EIS or environmental assessment is prepared by another Federal agency; and

(b) Research contracts relating to policy issues, biological-ecological data needed to make sound management decisions, and better methods for collecting and analyzing data. These activities are not, by themselves, major Federal actions significantly affecting the quality of the human environment and the Commission's activities are therefore categorically excluded from the requirement to prepare an EIS or environmental assessment except for proposals for legislation which are initiated by the Commission, for which the Commission shall develop environmental assessments or EIS's, as appropriate, in accordance with the NEPA regulations. The Commission shall independently determine whether an EIS or an environmental assessment is required where:

(1) A proposal for agency action is not covered by one of the typical classes of action above; or

(2) For actions which are covered, the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

§ 530.4 Environmental information.

Interested persons may contact the Office of the General Counsel for information regarding the Commission's compliance with NEPA.

PART 540—INFORMATION SECURITY

Sec.
540.1 Policy.
540.2 Program.
540.3 Procedures.

Authority: Executive Order 12065.

Source: 44 FR 55381, Sept. 26, 1979, unless otherwise noted.

§ 540.1 Policy.

It is the policy of the Marine Mammal Commission to act in accordance with Executive Order 12065 in matters relating to national security information.

§ 540.2 Program.

The Executive Director is designated as the Commission's official responsible for implementation and oversight of information security programs and procedures. He acts as the recipient of questions, suggestions, and complaints regarding all elements of this program, and is solely responsible for changes to it and for insuring that it is at all times consistent with Executive Order 12065. The Executive Director also serves as the Commission's official contact for requests for declassification of materials submitted under the provisions of Executive Order 12065, regardless of the point of origin of such requests. He is responsible for assuring that requests submitted under the Freedom of Information Act are handled in accordance with that Act and that declassification requests submitted under the provisions of Executive Order 12065 are acted upon within 60 days of receipt.

§ 540.3 Procedures.

(a) *Mandatory declassification review.* All requests for mandatory review shall be handled by the Executive Director or his designee. Under no circumstances shall the Exective Director refuse to confirm the existence or non-existence of a document requested under the Freedom of Information Act or the mandatory review provisions of Executive Order 12065, unless the fact of its existence or non-existence would itself be classified under Executive Order 12065. Request for declassification shall be acted upon within 60 days of receipt, providing that the request reasonably describes the information which is the subject of the request for declassification. In light of the fact that the Commission does not have original classification authority and national security information in its custody has been classified by another federal agency, the Executive Director will refer all requests for national security information in its custody to the federal agency that classified it or, if the agency that classified it has either ceased to exist or transferred the information in conjunction with a transfer of functions, to the appropriate federal agency exercising original classification authority with respect to the same subject, for review and disposition in accordance with Executive Order 12065 and that agency's regulations and guidelines.

(b) *Exceptional cases.* When an employee or contractor of the Commission originates information that is believed to require classification, the Executive Director shall insure that it is protected in accordance with Executive Order 12065 and shall promptly transmit it under appropriate safeguards to the agency with appropriate subject matter jurisdiction and classification authority for review and action in accordance with the Order and that agency's regulations and guidelines. The Executive Director shall transmit the information to the Director of the Information Security Oversight Office for his determination if it is not clear what agency has the appropriate subject matter jurisdiction and classification authority with respect to that information.

(c) *Derivative classification.* Derivative classification markings shall be applied to information that is in substance the same as information that is already classified, in accordance with Executive Order 12065, Section 2-1, unless it is determined through inquiries made to the originators of the classified information or other appropriate persons that the paraphrasing, restating, or summarizing of the classified information obviates the need for its classification, in which case the information shall be issued as unclassified or shall be marked appropriately. After verifying the current level of classification so far as practicable, paper copies of such derivatively classified information shall be marked so as to indicate:

(1) The source of the original classification;

(2) The identity of the Commission employee originating the derivatively classified document;

(3) The dates or events for declassification or review for declassification indicated on the classified source material; and

(4) Any additional authorized markings appearing on the source material.

(d) *Handling.* All classified documents shall be delivered to the Executive Director or his designee immediately upon receipt. All potential recipients of such documents shall be advised of the names of such designees and updated information as necessary. In the event that the Executive Director or his designee is not available to receive such documents, they shall be turned over to the Administrative Officer and secured, unopened, in the combination safe located in the Commission offices until the Executive Director or his designee is available. Under no circumstances shall classified materials that cannot be delivered to the Executive Director or his designee be stored other than in the designated safe.

(e) *Reproduction.* Reproduction of classified material shall take place only in accordance with Executive Order 12065, Section 4-4, and any limitations imposed by the originator. Should copies be made, they are subject to the same controls as the original document. Records showing the number and distribution of copies shall be maintained, where required by the Executive Order, by the Administrative Officer and the log stored with the original documents. These measures shall not restrict reproduction for the purposes of mandatory review.

(f) *Storage.* All classified documents shall be stored in the combination safe located in the Commission's offices. The combination shall be changed as required by ISOO Directive No. 1, Section IV-F-5-a. The combination shall be known only to the Executive Director and his designees with the appropriate security clearance.

(g) *Employee education.* All employees who have been granted a security clearance and who have occasion to handle classified materials shall be advised of handling, reproduction, and storage procedures and shall be required to review Executive Order 12065 and appropriate ISOO directives. This shall be effected by a memorandum to all affected employees at the time these procedures are implemented. New employees will be instructed in procedures as they enter employment with the Commission.

(h) *Agency terminology.* The use of the terms "Top Secret", "Secret", and "Confidential" shall be limited to materials classified for national security purposes.

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CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

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PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS

Subpart A—General

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601.25 Council statement of organization, practices and procedures.

AUTHORITY: 16 U.S.C. 1852, 1854, 1855; section 302(f)(6), 305(g), Pub. L. 94-265.

SOURCE: 42 FR 34452, July 5, 1977, unless otherwise noted.

Subpart A—General

§ 601.1 Purpose.

The regulations in this Part 601 implement certain portions of the Fishery Conservation and Management Act of 1967 (16 U.S.C. 1801-1892), which among other things, establishes eight Regional Fishery Management Councils (hereinafter referred to as "Councils"). The principal responsibilities of these councils are to provide the nucleus of a national fishery conservation and management program through the systematic development of fishery management plans and amendments to such plans, to submit periodic and other reports to the Secretary, to continually review and revise assessments as to optimum yield and the total allowable level of foreign fishing, and to conduct other necessary and appropriate activities with respect to the conservation and management of the fisheries within their geographical area of concern. The Councils act as independent bodies, whose actions must conform to the uniform standards established by Part 601. Part 601 describes matters pertaining to the establishment, organization, practices, and procedures of the Councils.

§ 601.2 Definitions.

The terms used in these regulations shall have the meanings that are prescribed in section 3 of the Act. In addition, the following definitions apply:

(a) *Administrative and Technical Support Services.* The administrative, technical, legal, and scientific services needed by the Councils, authorized by the Secretary, and provided by the government to assist the Councils in the fulfillment of their various functions required by the Act.

(b) *Administrator.* The Administrator of the National Oceanic and Atmospheric Administration.

(c) *Advisory Group.* The Scientific and Statistical Committees or advisory panels established under the Act.

(d) *Associate Administrator.* The Associate Administrator for Marine Resources, National Oceanic and Atmospheric Administration.

(e) *Confidential.* Confidential means containing information, the unauthorized disclosure of which could be prejudicial or harmful. Depending on the context within which it is used, the word: (1) Identifies information having an official security classification of Confidential or higher relating to the protection of national security, or (2) describes information/data that is identifiable with an individual, business, or some other entity and that is accepted from any person by the Secretary under a stipulation that limits disclosure.

(f) *Council.* Regional Fishery Management Council.

(g) *Director.* The Director of the National Marine Fisheries Service.

(h) *Federal Budget Cycle.* The 33-month process of formulating and executing the Federal budget.

(i) *Fishery management plan.* A document that contains a systematic description of a given fishery and that sets forth the objectives and strategies for the management of the fishery.

(j) *Highly Migratory Species.* The following, among others, are considered highly migratory species for the purposes of the Act:

TUNA

Albacore, *Thunnus alalunga;*
Bigeye tuna, *Thunnus obesus;*
Bluefin tuna, *Thunnus thynnus;*
Southern bluefin tuna, *Thunnus maccoyii;*
Yellowfin tuna, *Thunnus albacares;* and
Skipjack tuna, *Euthynnus pelamis.*

(k) *Regional Director.* The Regional representatives of the Director. There are five regional offices of the National Marine Fisheries Service whose Regional Directors serve on the various Councils as specified by the Act.

(l) *Regional Fishery Management Council Operations Manual.* A compilation of technical and explanatory information, the purpose of which is to provide assistance to the Councils in the fulfillment of their various functions.

[42 FR 34452, July 5, 1977, as amended at 42 FR 36980, July 18, 1977]

Subpart B—Geographical Boundaries

§ 601.11 General.

(a) *Fishery Conservation Zone.* The Act creates a zone contiguous to the territorial sea, which is called the fishery conservation zone. The outer boundary of the zone is 200 nautical miles from the baseline from which the territorial sea is measured and the inner boundary is a line coterminous with the seaward boundary of each of the coastal States. (See 43 U.S.C. 1301(b) and 1312 for definition of "seaward boundary".)

(b) *Scope.* (1) The boundaries described in § 601.12 delineate the geographical area of authority of adjacent Council within this fishery conservation zone.

(2) Within the geographical area of authority, each Council shall develop fishery management plans for each fishery involving the following categories of fishery resources:

(i) All fish within this zone, except "highly migratory species";

(ii) All anadromous species throughout their migratory range, except within a conservation zone recognized by the United States; and

(iii) Continental Shelf fishery resources.

(c) *Jurisdiction*—(1) *State.* Generally the Act does not diminish the fishery jurisdiction of any State within its own boundaries, nor does it extend State fishery jurisdiction beyond a State's seaward boundary.

(2) *Intercouncil.* In any case in which the range of stock or a fishery extends beyond the geographical area of authority of any one Council, as defined in § 601.12, the Secretary is authorized to designate the Council that shall prepare the fishery management plan for such a fishery, after consultation with the Councils concerned. When such a plan includes waters adjacent to the States represented on more than one Council, the Council thus designated should consult with the other affected Council(s). The Secretary may require that a plan be prepared jointly by the Councils concerned. In this case, any plan or amendment must, before being submitted to the Secretary, shall be approved by a majority of the voting members, present and voting, of each participating Council.

§ 601.12 Intercouncil boundaries.

(a) *New England and Mid-Atlantic Fishery Management Councils*—(1) *Description.* The boundary commences at the intersection point of Connecticut, Rhode Island and New York at 41°18′16.249″latitude and 71°54′28.477″ longitude and proceeds S 37°22′32.75″ E to the points of intersection with the outward boundary of the fishery conservation zone as specified in Title I, section 101 and Title II, section 202(d) of the Act.

(2) *Method of Determination.* The boundary between the New England and Mid-Atlantic Councils continues the agreed state boundary between New York and Rhode Island (to which Congress granted consent on July 1, 1944, Pub. L. 78-399) seaward to the 200 mile boundary of the fishery conservation zone.

(b) *Mid-Atlantic and South Atlantic Fishery Management Councils*—(1) *Description.* The boundary commences at the seaward boundary between the States of Virginia and North Carolina, and proceeds due East to the point of intersection with the outward boundary of the fishery conservation zone as specified in Title I, section 101 and Title II, section 202(d) of the Act.

(2) *Methods of determinations.* The boundary between the Mid-Atlantic and South Atlantic Councils continues the agreed State boundary between Virginia and North Carolina seaward to the 200-mile boundary of the fishery conservation zone and, when drawn, would be a line of constant latitude described as 36°33′00.8″N.

(c) *South Atlantic and Gulf of Mexico Fishery Management Councils*—(1) *Description.* The boundary commences at the seaward boundary between counties of Dade and Monroe in the State of Florida, and proceeds due East to the intersection with the outward boundary of the fishery conservation zone as specified in Title I, section 101 and Title II, section 202(d) of the Act.

(2) *Method of determination.* The boundary between the South Atlantic and Gulf of Mexico Councils continues the agreed county boundary between Dade and Monroe Counties to minimize potential difficulties for fishermen, the affected Councils, and outward bordering countries.

[42 FR 36980, July 18, 1977]

Subpart C—Uniform Standards for Organization, Practices and Procedures

§ 601.21 General.

(a) *Purpose.* Section 302(f)(6) of the Act requires each Council to determine its own organization, practices and procedures for carrying out its functions in accordance with such Uniform Standards as are prescribed by the Secretary. The regulations contained in this subpart provide the Uniform Standards in accordance with which the Councils shall operate.

(b) *Applicability of other laws*—(1) *National Environmental Policy Act of 1969 (42 U.S.C. 4321).* The National Environmental Policy Act (NEPA) sets forth the strategy of the Congress to achieve coordination of Federal activities and environmental considerations. NEPA's basic purpose is to insure that, in addition to technical and economic considerations, Federal officials weigh and give appropriate consideration to unquantified environmental values in policy formulation, decisionmaking and administrative actions. Section 102(2)(C) of NEPA requires preparation of a detailed environmental impact statement in the case of major Federal actions that significantly affect the quality of the human environment. Procedures for compliance with NEPA in the preparation and submission of fishery management plans and amendments to such plans are set forth in § 602.6 [Reserved].

(2) Provisions of three interrelated laws affect Council practices and procedures, particularly concerning opportunity for public input, public access to Council meetings and to agendas, records, and reports of such meetings. These laws are:

(i) *The Federal Advisory Committee Act (5 U.S.C. App. I).* The intent of Congress with regard to the application of the Federal Advisory Committee Act (FACA) is stated in the Report of the Conference Committee (House Rept. No. 94-948, March 24, 1976). The provisions of FACA apply to the Councils and their committees and panels. Meetings must be open to the public except as provided for in § 601.24 (b)(4)(iii) of these regulations. The application of FACA is designed to ensure open meetings and public access to information generated by the Councils.

(ii) *The Freedom of Information Act (5 U.S.C. 552(b)).* The Freedom of Information Act (FOIA) provides for public access to records of the executive branch of the Federal Government, and to records generated at the request of the Federal Government. Nine groups of exceptions are provided that allow the withholding of information. Application of FOIA is covered more specifically in Part 603.

(iii) *The Privacy Act (5 U.S.C. 552 (a)).* This Act provides to individuals certain rights of access to records kept about them, and at the same time requires that the confidentiality and use of the information be strictly regulated, placing restrictions on the collection, retention, and use of personal information. Specific application of this Act is found in Part 603.

(3) *Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et*

seq.). The principal objective of this Act is to encourage and assist States in developing coastal zone management programs, to coordinate State activities, and to safeguard the regional and national interests in the coastal zone. While the coastal zone does not extend beyond the territorial sea, activities taking place beyond the territorial sea may impact on the coastal zone and thus come within the influence of coastal zone planning. In the preparation of fishery management plans, Councils should be particularly cognizant of the provisions of section 307(c) of this Act that require that any Federal activity directly affecting the coastal zone of a State be consistent with that State's approved coastal zone management program. Thus, Councils will need to coordinate their planning actions with the appropriate State agencies involved in coastal zone program development.

§ 601.22 Organization.

(a) *General.* This part addresses such questions as organization of the Council members, administrative staff and advisory panels.

(b) *Council members.* The Councils consist of voting and nonvoting members or their designees, as specified in the Act.

(1) *Terms.* Members appointed following initial constitution of the Councils serve for a term of three years. An individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term. The anniversary date for measuring terms of membership is August 11.

(2) *Designees.* (i) The Act authorizes the principal State officials, the NMFS Regional Directors, and the nonvoting members to designate individuals to attend Council meetings in their absence. Only one designee per Council may be so specified by each of the above officials.

(ii) A designee may serve for all or part of a Council meeting in the absence of the individual he or she is replacing and has the same voting power as his or her designator.

(iii) If circumstances require, the Council member may change his or her designee. In such case, the Chairman of the Council must be notified and given in writing, in advance of the meeting at which the designee will represent the Council member, the name, address, and position of the individual designated. A designee may not name a designee for himself or herself.

(iv) Designees without appropriate security clearance may not attend meetings closed for security reasons, nor handle classified material. (See § 601.23(e)(3).)

(v) Reimbursement of actual expenses and compensation, as described in § 601.23(f), associated with travel to any meeting shall be limited to the member, or, in the case of the absence of the member, one designee. A designee who serves for part of a Council meeting may receive reimbursement of actual expenses and compensation associated with necessary travel and attendance at that part of a Council meeting wherein the member is absent.

(3) *Designation of regional directors.* The Regional Directors, NMFS shall, in accordance with the Act, serve as voting members on the Councils as follows:

Council	Regional Director
New England	Northeast region.
Mid-Atlantic	Do.
South Atlantic	Southeast region.
Caribbean	Do.
Gulf of Mexico	Do.
Pacific	Northwest region.
North Pacific	Alaska region.
Western Pacific	Southwest region.

(4) *Appointments.* (i) Inasmuch as each year approximately one-third of a Council's appointed membership will lapse, new members shall be appointed by the Secretary or the Secretary's delegate from lists of nominees submitted by the Governors of each applicable constituent State by May 15 of each year. The Governors are responsible for determining that their nominees meet the qualification requirements of the Act and for providing appropriate documentation for the Secretary or the Secretary's delegate to make a reasoned choice.

(ii) There are two categories of seats for which appointed voting members may be eligible: "obligatory" and "at-large." Each Council constituent State has one obligatory seat. When the term of an obligatory State member expires, the Governor of that State is required to submit at least three nominations from which the selection of a replacement will be made by the Secretary or the Secretary's delegate. When the term of an at-large State member expires, the Governor of each member State of a Council shall submit at least three nominations for each vacancy, and the selection will be made by the Secretary or the Secretary's delegate from among the collective nominations by the Governors of all member States. Any individual whose term is expiring may be renominated for consideration.

(iii) The number of individuals who must be nominated by a Governor shall be equal to at least three times the number of vacancies available, and each such nominee shall be considered as available for any such vacancy. However, in a case where the terms of both an obligatory member and an at-large member expires the same year, the Governor of the State holding the expiring obligatory seat may indicate that remaining nominees for an obligatory seat may be considered for an at-large seat.

(iv) The procedures in § 601.22 (b)(4)(i)-(iii) also apply when a vacancy occurs prior to the normal expiration of a term of membership of a voting member appointed by the Secretary or the Secretary's delegate.

(v) If a Governor fails to submit a list of at-large nominees within the time allotted, then the new at-large member(s) may be appointed from the list of names submitted by the Governors of the other applicable constituent States.

(5) *Council organization.* The Chairman shall be elected from among the voting members by a majority vote of the voting members present and voting. The term of office for the Chairman may not exceed one year; however, the Chairman is eligible for re-election. The Council may establish other officers as deemed necessary and set their terms of office. The Council may appoint standing and ad hoc committees from among the voting and nonvoting members as it deems necessary for the conduct of Council business. Such committees shall conform to the procedures for assuring open meetings specified for the Council.

(c) *Administrative staff.* Each Council shall appoint an Executive Director and such other full and part time administrative employees as the Secretary determines are necessary to the performance of its functions, and which are consistent with budgetary limitations. However, the number of such employees may not exceed seven except as approved by the Director, NMFS. The Executive Director and staff are responsible to the Chairman of the Council.

(1) *Executive director*—(i) *Duties.* Each Council, through its Chairman, shall assign such duties to the Executive Director as it deems appropriate, consistent with these uniform standards.

(ii) *Compensation.* The administrative responsibilities, coupled with the complexity of the workload of the Council, will influence the pay level appropriate to a given Executive Director position, provided that compensation shall not exceed the yearly rate for the highest step of a GS-15 in the General Schedule.

(2) *Other administrative staff*—(i) *Minimum.* As a minimum, each Council shall have an administrative staff consisting of an executive director, an administrative officer, and a secretary.

(ii) *Additional staff.* Additional administrative staff above the minimum prescribed above will vary by Council because of differences in workload and availability of resources. The number and types of additional positions will also vary over time as the work of the Council is defined during its initial phase of operation.

(d) *Scientific and statistical committee.* Each Council shall establish and maintain, and appoint the members of, a Scientific and Statistical Committee to assist it in the development, collection and evaluation of such statistical, biological, economic, social and other scientific information as is relevant to such Council's development or amendment of any fishery management plan. The Council is authorized to pay the actual expenses of such Committee members while engaged in Council business.

(1) *Committee function.* The Scientific and Statistical Committee provides expert scientific and technical advice to the Regional Council on the development of fishery management policy, on the preparation of fishery management plans, and on the effectiveness of such plans once in operation. The Committee aids the Council in identifyfing scientific resources available for the development of plans, in establishing the objectives of plans, in establishing criteria for judging plan effectiveness and in the review of plans.

(2) *Committee organization.* The members of the Committee and a Chairman are appointed by the Council. Membership shall be multidisciplinary, including both biological and social scientists from the Federal, State, and private scientific community who are knowledgeable about the fisheries to be managed. The size of the Committee is discretionary within the resources budgeted to the particular Council. The Committee shall meet in the area encompassed by the Council's constituent States, with the approval of the Chairman of the Council. No staff is assigned to this Committee but staff support may be requested from the Chairman of the Council or the Executive Director. This committee shall have a charter separate from that of its parent Council.

(e) *Fishery advisory panels.* Each Council is authorized to establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under the Act. The Councils are authorized to pay the actual expenses of the members of such panels while engaged in the performance of Council business.

(1) *Panel function.* Fishery Advisory Panels are authorized principally to obtain the pragmatic advice and counsel of the people most affected by, or interested in, Council matters of fishery management policy; on the preparation of fishery management plans; on their review prior to submission to the Secretary; and on their effectiveness once in operation. These Panels aid the Council in establishing both the goals and objectives of plans as well as the criteria for judging plan effectiveness, and serve as a communication link with those who must operate under the management regime.

(2) *Panel organization.* The members and a Chairman are appointed by the Council. The membership of each Panel shall be composed of a balanced representation of the interests of those who are either actually engaged in the harvest, processing or consumption of, or are knowledgeable and interested in the conservation and management of, the applicable fishery or stock(s) of fish. The size of each Panel is discretionary within the resources available to the particular Council, but each panel must be of sufficient size and number to permit a balanced representation of interests. It is suggested for the purpose of minimizing administrative requirements that each Council establish one broad-based advisory panel. Subpanels may be used to provide advice on individual fisheries on unique fishery resources under Council consideration. The Panels shall meet in the area encompassed by the Council's constituent States as deemed necessary by the Council Chairman. No staff is assigned to these Panels, but staff support may be requested from the Chairman of the Council or the Executive Director. Each panel shall have its own charter separate from those of other panels, from the Scientific and Statistical Committee, and from its parent Council.

§ 601.23 Administrative practices and procedures.

(a) *General.* The Act directs the Secretary to provide the Councils with administrative support services as are necessary for their effective functioning. The Administrator of the General Services Administration is directed by the Act to furnish each Council with such offices, equipment, supplies and services as he is authorized to furnish to any agency or instrumentality of the United States. All Federal agencies are authorized to detail personnel on a reimbursable basis to the Councils after consulting with the Director, NMFS. (See paragraph (d)(3) and (e)(2) of this section.) Uniform Standards in this section are provided in order to expedite the delivery of this support with a minimum burden on the substantive work of the Councils.

(b) *NOAA field units.* NOAA field units are assigned to provide services and support to each Council as follows:

Council	Servicing field unit
New England	Northeast region, NMFS.
Mid-Atlantic	Do.
South Atlantic	Southeast region, NMFS.
Caribbean	Do.
Gulf of Mexico	Do.
Pacific	Northwest region, NMFS.
North Pacific	Alaska region, NMFS.
Western Pacific	Southwest region, NMFS.

These NOAA field units are authorized to provide for budgetary, accounting, personnel, and procurement support to their respective Councils, and may act as liaison between the Councils and other Federal agencies.

(c) *Budgeting, funding, and accounting*—(1) *Federal funds.* The funding for the administrative and technical support of Council operations is included in the budget of the Department of Commerce and, through that agency, in the budgets of NOAA and NMFS. The funding requirements for the Councils are subject to regular budgetary review procedures. Annual grants will provide such federal funds as the Secretary determines are necessary to the performance of the functions of the Councils and consistent with budgetary limitations.

(2) *Funds from other sources.* [Reserved]

(3) *Financial procedures and standards.* The Councils shall be governed by the requirements of Office of Management and Budget Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations" (41 FR 32016) as published July 30, 1976, and the following standards:

(i) *Procurement.* The Councils shall establish their own procurement policies and procedures, which shall be included in the Statement of Organization, Practices, and Procedures (see § 601.25). However, all Councils shall adhere to the requirements set forth in OMB Circular A-110, Attachment 0, paragraphs 3 and 4.

(ii) *Financial management system.* The fiscal year will coincide with the Federal Government's fiscal year. A Cash Receipts and Disbursement Journal with a monthly Summary of Accounts is required as a minimum bookkeeping system. In addition, a Statement of Income and Expenses for the Council shall be prepared monthly for the Council membership. Each cash disbursement shall be approved by an individual(s) designated by the Council Chairman. The approval authority shall be included in any Statement of Organization, Practices, and Procedures published after the effective date of this regulation. A uniform classification of accounts shall be used by all Councils in maintaining accounting records in accordance with the Model Accounting System issued by NMFS on November 26, 1976 and provided to the Councils. When budget estimates are submitted to the Director, the uniform account classification titles shall be used.

(iii) *Advance of funds and letters of credit.* Grant funds in an amount less than $250,000 will be disbursed from the Department of the Treasury upon receipt in NOAA of a properly executed Advance of Funds request (Form SF-220). OMB Circular A-110 limits the amounts of funds that can be disbursed and requires that transfer of funds from the Treasury be made as soon as possible to the time of disbursement by the grantee. A Letter of Credit will be established for grants in excess of $250,000. Drawdowns from the Treasury will be made through the commercial bank and a Federal Reserve Bank. The Council shall initiate each drawdown at approximately the same time that checks are issued by the Council in payment of Council liabilities. Drawdowns should not be made more frequently than daily or in amounts less than $10,000. These requirements are under the Department of the Treasury Circular 1075, "Regulations Governing Withdrawal of Cash from the Treasury for Advances Under Federal Grants and Other Programs" (38 FR 5242) as published February 27, 1973.

(iv) *Audit.* Independent audit is required not less than every two years. Annual audits may be performed at the Council's discretion. All Councils are subject to audit by the Secretary of Commerce and the Comptroller General of the United States. The scope of audit may include: Conduct of financial operations; compliance with applicable laws and regulations; economy and efficiency of administrative procedures; and achievement of results.

(v) *Financial Reports.* Reports are required which summarize total expenditures made and Federal funds unexpended for each award, and the status of Federal cash received. The Report of Federal Cash Transactions (Form SF-272) is required from each Council quarterly and should be submitted to the NOAA Grants Officer no later than 15 working days after the end of the quarter. A final report is required upon completion of the grant, to be submitted within 90 days after completion of the grant. The Financial Status Report (Form SF-269) is required from each Council quarterly and should be submitted to the NOAA Grants Officer no later than 15 working days after the end of the quarter. A final report is required upon completion of the grant. Guidance for the preparation of these reports and other financial reporting procedures is in Attachment G of OMB Circular A-110.

(d) *Employment practices.* The following sets forth the responsibilities of the Councils with regard to personnel matters and establishes personnel related standards to be used by the Secretary in analyzing Council budgets.

(1) *Staffing.* Each Council may appoint and assign duties to an Executive Director and such other full and part time administrative employees as the Secretary determines are necessary to the performance of its functions. Each position must be justified during the budget process described in OMB Circular A-110. Descriptions of the work to be performed shall be submitted in accordance with § 601.23(d)(6) dealing with salary and wage administration.

(2) *Experts and consultants.* Each Council may contract with experts and consultants as needed and within their respective budgets to provide technical assistance. Such experts and consultants may not provide services on a permanent basis (see § 601.231(e)(2)).

(3) *Details of Government employees.* Each Council may request the head of any Federal agency to detail to such Council on a reimbursable basis any personnel of such agency to assist the Council in the performance of its functions under the Act (see § 601.23(e)(2)). The length of such details shall be mutually determined by the Council, the Federal employee and his or her agency. Federal employees so detailed retain all benefits, rights and status as they are entitled to in their regular employment. The Councils may negotiate arrangements with State or local governments to utilize employees of those governments.

(4) *Nondiscrimination.* All activities of the Council must operate under a policy of equal employment opportunity. Council staff positions shall be filled solely on the basis of merit, fitness, competence, and qualifications. Employment actions shall be free from discrimination based on race, religion, color, national origin, sex, age, or physical handicap.

(5) *Personnel actions.* Subject to these instructions, and within budgetary constraints, the Councils may establish positions, recruit, hire, compensate and dismiss personnel. Involuntary separation should be for cause alone, with reasonable notice given to the employee.

(6) *Salary and wage administration.* (i) In setting rates of pay for Council staff, the principle of equal pay for equal work shall be followed. Variations in basic rates of pay should be in proportion to substantial differences in the difficulty and responsibilities of the work performed.

(ii) A cost of living allowance may be applied to the salaries of Council members and staff whose post of duty is in one of the following areas: Alaska, Hawaii, Guam, Virgin Islands, and Puerto Rico. The rate of cost of living allowance may not exceed that paid by the Federal Government in the same area. The current rates may be obtained from the applicable NOAA field unit.

(iii) The duties of any new position shall be contained in a brief description to be submitted to the NOAA personnel office servicing the NMFS Regional Office assigned to a Council prior to the submission of a budget in which the salary of that position is requested. The Council will be provided a salary range appropriate to the position and a determination of the applicability of the Fair Labor Standards Act. The Council then may fill the position at any salary level within that range, except that, unless the recruitment of exceptionally qualified employees is hampered, the policy of hiring at the beginning rate shall be recognized. The annual pay for any staff position may not exceed the current rate for the top step of grade 15 of the Federal General Schedule at any time. After a position has been filled, an employee may be promoted annually and recognized for superior performance in accordance with Council policies.

(7) *Leave.* Employees of the Council should be granted paid leave for holidays, vacations or exigencies, sickness, and civil duties (jury, military reserve obligations) as determined by the Council. Paid annual leave should not exceed 20 days per year, and sick leave should not exceed 13 days per year. Earned annual and sick leave may be accumulated from year to year.

(8) *Employee benefits.* The Council should provide its employees the opportunity to participate in group medical insurance, life insurance and retirement plans and pay a reasonable proportion of the cost of such plans.

(9) *Conduct.* The Councils are responsible for maintaining high standards of ethical conduct among themselves, their staffs, and their advisory groups. Such standards should include the following principles:

(i) No employee of the Council shall use his or her official authority or influence derived from his or her position with the Council for the purpose of interfering with or affecting the result of an election to or a nomination for any national, state, county, or municipal elective office.

(ii) No employee of the Council shall be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, state, county, or municipal election, or on account of his or her political affiliation.

(iii) No Council member or employee shall pay, or offer, or promise, or solicit, or receive from any person, firm, or corporation, a contribution of money or anything of value in consideration of either support or the use of influence or the promise of support, or influence in obtaining for any person, any appointive office, place or employment under the Council.

(iv) No employee of the Council shall have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her council duties.

(v) No Council member, employee of the Council or member of a Council advisory group shall use or allow the use, for other than official purposes, of information obtained through or in connection with his or her Council employment that has not been made available to the general public.

(vi) No Council member or employee of the Council shall engage in criminal infamous, dishonest, notoriously immoral or disgraceful conduct prejudicial to the Council.

(vii) No Council member or employee of the Council shall use Council property on other than official business. Such property shall be protected and preserved from improper or deleterious operation or use.

(10) *Personnel files.* A file for each council member containing appointment papers, security reports, biographical data and other official papers will be centrally maintained in NOAA under security and safeguard conditions required of files subject to the Privacy Act. This file will be available to the member, and to other persons only when a need to know has been established. Each Council should maintain in its office, personnel files on their employees and experts and consultants under contract under ap-

propriate safeguards in accordance with the Privacy Act.

(11) *Security investigations.* When it is anticipated that security classified information will be kept or handled in council offices, certain employees shall be designated to be permitted access to the information in accordance with Federal standards and shall receive appropriate security clearance from the Office of Investigation and Security of the Department of Commerce.

(e) *Personnel*—(1) *Council staff.* The Councils may, consistent with the standards of employment practice standards contained in § 601.23(d), establish positions and recruit, hire, compensate, and dismiss personnel. The personnel procedures of each Council will be subject to audit periodically.

(2) *Ad Hoc staff support.* All Federal agencies are authorized by section 302 (f)(2) of the Act to detail personnel to the Council on a reimbursable basis. Any Council requests to the heads of such agencies must contain the purpose of the detail, the length of time of the detail, the compensation to be paid, and the stipulation that the Director, NMFS, be consulted prior to granting the request. Copies of this correspondence shall be transmitted to the Director, NMFS, through the appropriate NOAA Field Office to facilitate such consultation. Legal Counsel on a continuing basis is available from the regional office of the NOAA Office of General Counsel. Councils are expected to obtain legal counsel from NOAA before seeking other legal counsel. Other experts and consultants including legal counsel, may be used as the Council considers appropriate, consistent with budgetary limitations (see § 601.23(d)(2)).

(3) *Council access to security classified material.* The security investigation that is routinely conducted at the time a nominee to the Council is appointed is the basis for authorizing access on a need-to-know basis to material classified Confidential. Normally this should be sufficient for Council purposes (see also § 601.22(b)(2)(iv)). Clearance for higher classifications may be granted, following regular Federal procedures, by the Secretary. Access to security classified material is governed by security regulations and procedures pursuant to Executive Order 11652, effective June 1, 1972. Need-to-know is determined by the authority having custody of the material. Persons who are not members of the Council, including Council staff, and members of advisory groups, must possess the appropriate security clearance before they may be present when classified materials are discussed or examined. Such clearances will be requested through the appropriate NOAA field unit.

(f) *Compensation and expense*—(1) *Compensation.* The voting members of each council who are not employed by the Federal Government or any State or local government shall receive compensation at the daily rate for a GS-18 in the General Schedule when engaged in the actual performance of duties as assigned by the Chairman of the Council.

(2) *Expenses.* Council voting members, the nonvoting Executive Director of the Marine Fisheries Commission for the geographical area concerned, (if any), the additional nonvoting member of the Pacific Council, and the members of the advisory panels shall be reimbursed for actual expenses associated with travel on official Council business. The Council may also pay the transportation and expenses, on an actual expense per diem basis, of invited experts and consultants, and Council staff. All such expenses must be authorized by the Chairman of the Council or the Executive Director and be supported by detailed vouchers attested to by the person incurring the expenses. Individual receipts, except for hotel receipts, are not required. Foreign travel must have the prior consent of the Administrator.

(3) *Actual expense defined.* Actual expenses include transportation by air coach, rail coach, bus or privately-owned vehicle (automobile or private plane—reimbursed on a per mile basis); room and meals within a reasonable limit to be established by the NOAA Travel Handbook; and incidental expenses such as taxi fares, parking and telephone calls on official business.

(g) *Reporting*—(1) *Annual report.* The Act requires the Councils to report to the Secretary annually before February 1 on Council activities during the immediately preceding calendar year. The annual report will be used by the Secretary to fulfill her obligation to report to the Congress and the President no later than March 1 of each year on her and the Councils' activities in the preceding year. The annual Council report shall be submitted directly to the Administrator, NOAA, Washington, D.C. 20230, in eight copies. The minimum contents of such a report are as follows:

(i) A list of Council Members with addresses and affiliations, indicating voting and nonvoting members, Council officers serving during the year, office titles, and dates of such service.

(ii) A list of Council administrative staff with titles.

(iii) A list of members of the Scientific and Statistical Committee with addresses and affiliations, and lists of members of each advisory panel with addresses and affiliations.

(iv) A list of Council meetings and hearings held and of Scientific and Statistical Committee and advisory panel meetings held, with dates, locations and the subjects of discussion, indicating whether they were open, closed or partially closed to the public, and citing the appropriate authorization for any closed portions of the meetings.

(v) A list of all items sent to or received from the Secretary during the calendar year, including proposed fishery management plans and amendments, and comments on foreign fishing applications or on plans developed by the Secretary, with an indication of the date such items were transmitted to or received from the Secretary and the date of any action taken.

(vi) An appropriate summary of the discussion at any closed sessions held during the year.

(vii) The cost to operate the Council, indicating sources of funding and the respective amounts.

(viii) An estimate of the man-years of staff support by source (Federal, State, private) that was donated or provided without payment or reimbursement.

(2) *Other reports.* The Councils shall prepare any other relevant reports as the Secretary may request including information required by the reporting requirements of FACA (§ 601.21(b)(2)). Requirements for periodic financial or other reports for purposes of NOAA budgetary control and reporting are described in individual grants issued to the Councils and in § 601.23(c)(3) [Reserved].

[42 FR 34452, July 5, 1977, as amended at 42 FR 36980, July 18, 1977]

§ 601.24 Operational practices and procedures.

(a) *General.* In fulfilling the Councils' responsibilities and functions, the Council members will meet in plenary session, in working groups, or individually to hear statements in order to clarify issues, gather information or make decisions regarding material before them. This section establishes uniform standards for the conduct of those activities to meet the requirements of the Act and to facilitate the exercise of Council responsibilities.

(b) *Meeting*—(1) *General.* The Councils will meet at the call of the Chairman or upon request of a majority of the voting members. Advisory groups shall meet with the approval of the Chairman of the Council. The Councils shall develop a mechanism for coordinating requests for advice from their advisory bodies through the Executive Director.

(2) *Notice.* Notice of meetings, including time, location, subjects to be discussed, etc., must appear in the FEDERAL REGISTER at least 20 days prior to the meeting. Notices shall be submitted by the Council, no later than 26 days prior to the meeting, to the Director, National Marine Fisheries Service, who shall submit such notice to the FEDERAL REGISTER.

(3) *Record.* Detailed minutes shall be kept and made available to the public upon request, except where the meeting or portion thereof was closed, in which case only the open portions must be made available.

(4) *Conduct.* (i) Meetings shall be conducted in a manner to permit the greatest possible participation by all members of the Council and the

public. Decisions by consensus are permitted except where the issue is Council approval or amendment of a fishery management plan (including any proposed regulations), or comments for the Secretary on foreign fishing applications or fishery management plans developed by the Secretary. In these cases a vote is required.

(ii) A majority of the voting members of any Council shall constitute a quorum for Council meetings, but one or more such members designated by the Council may hold hearings.

(iii) All meetings or portion thereof shall be open to the public with only those exceptions set forth in the Federal Advisory Committee Act (FACA) (as amended by the Government in the Sunshine Act of 1976 (Pub. L. 94-409, 90 Stat. 1241)). Closure of a meeting requires a prior determination by the Secretary or the Secretary's delegate that the reasons for excluding the public are valid and that it is not in the public interest to leave the meeting open. Such a determination must be requested through the Assistant Secretary for Administration, Department of Commerce. A notice of a meeting which a Council desires to be closed entirely or in part to the public shall be submitted by the Council, no later than 45 days prior to the meeting, to the Director, NMFS, who shall request a determination. If the determination permits closing of the meeting, such notice shall be published in the FEDERAL REGISTER.

(iv) When there is a vote, the majority of the voting members present and voting shall rule. Voting by proxy is not permitted.

(v) Voting members of the Council who disagree with the majority on any issue to be submitted to the Secretary may submit a statement of their reasons for dissent to the Secretary.

(5) *Frequency and duration.* The Councils shall meet in plenary session at least once every three months. Council advisory groups may meet as frequently as necessary, with the approval of the Council Chairman.

(6) *Location.* (i) Each Council shall conduct all meetings and hearings within its geographic area of concern. In the particular case of the North Pacific Council, "geographical area of concern" means within the State of Alaska. When two or more Councils have been designated by the Secretary to prepare a fishery management plan jointly, Councils so designated may meet jointly within their constituent States for the purpose of developing or amending such a plan.

(ii) The Council meeting place should have a capacity large enough to accommodate the anticipated public attendance and be easily accessible to those interested in attending.

(c) *Hearings*—(1) *General.* The Act directs the Councils to hold public hearings in order to provide the opportunity for all interested persons to be heard in the development of Fishery Management Plans, amendments thereto, and with respect to the administration and implementation of the Act. The Council may use its judgment regarding when and where such hearings should be held, consistent with § 601.24 (b) (4) and (6).

(2) *Conduct.* When it is determined that a hearing is appropriate, the Chairman of the Council will designate at least one voting member of the Council to officiate. Conduct of the hearing, beyond the stipulation that all points of view be given a chance for expression, is within the discretion of the hearing official under whatever instructions the Council may wish to provide.

(3) *Notice.* Hearings shall follow the same procedures for announcement as for Council and advisory group meetings. Advance notice also should be given in the local media where the hearing is to take place. Publicity should be sufficient in time, substance, and area coverage to assure that all interested parties are aware of the opportunity to make their views known.

(4) *Record.* An accurate record of the participants and their views shall be reported back to the Council and maintained as a part of the Council's official records.

(d) *Council operational structure*—(1) *General.* In addition to the Council staff and the advisory groups that are provided for in the Act, an operational structure will be needed to develop basic inputs to the Fishery Management Plans and to assemble drafts for formal review by the Councils and their advisors. The operation structure(s) selected by a Council should:

(i) Address directly the responsibilities and functions listed in section 302(h) of the Act; and

(ii) Strike a reasonable balance among the following criteria.

(2) *Criteria for formation*—(i) *Focused responsibility.* The structure selected should assign clearly defined responsibilities in a clearly defined chain of command consistent with the formal structure provided in the Act.

(ii) *Administrative simplicity.* The structure selected should permit thorough and uncomplicated supervision by those with formal responsibility, including the Executive Director of the Council.

(iii) *Flexibility.* Within defined responsibilities, the structure should be able to bring to bear the necessary expertise on planning problems and to respond to shifts in Council priorities.

(iv) *Independence and relevance of science.* The scientific input to the development of plans should to the extent possible, be institutionally insulated from managerial biases and pressure from interested parties while remaining relevant to the problems of management.

(v) *Quality of scientific and technical information.* The structure should assure that the best scientific and technical information available will be applied in plan development.

(vi) *Minimum cost.* Cost, both in dollars and in diversionary impact on ongoing programs should be minimized within the constraints of the other criteria.

§ 601.25 Council statement of organization, practices and procedures.

(a) *General.* (1) The Act requires that the details of how a Council operates shall be published by the Council and made available to the public. The required Statement of Organization, Practices and Procedures, as a minimum, shall address the items listed in the format below.

(2) Publication will be in the FEDERAL REGISTER, and include an address where interested members of the public may write to request copies. Changes in operating practices and procedures shall be reflected in revisions to the statement, which shall likewise be published and made available to the public.

(b) *Format.* (1) Name of council.

(2) Location of offices.

(3) Legal authority.

(4) Purpose.

(5) Council composition.

(6) Officers and terms of office.

(7) Staff.

(i) Composition.

(ii) Functions.

(iii) Employment practices.

(8) Standing committees of council members.

(i) Name.

(ii) Composition.

(iii) Function.

(9) Meetings and hearings.

(i) Frequency.

(ii) Duration.

(iii) Location.

(iv) Agendas or orders of business.

(v) Minutes.

(vi) General rules of procedures.

(vii) Authority of the chair.

(10) Advisory panels.

(i) Name.

(ii) Composition.

(iii) Function.

(11) Organization of management plan development teams.

(i) Organization.

(ii) Practices and procedures.

(iii) Balance among criteria.

(A) Focused responsibility.

(B) Administrative simplicity.

(C) Flexibility.

(D) Independence and relevance of science.

(E) Quality of scientific and technical information.

(F) Minimum cost.

(12) Financial management system.

(i) Standards for and code of employment conduct in contract awards and administration.

(ii) Procurement procedures.

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(iv) Accounting and budgetary control procedures.

PART 602—GUIDELINES FOR DEVELOPMENT OF FISHERY MANAGEMENT PLANS

Sec.

602.1 Purpose and scope.
602.2 National standards for fishery conservation and management.
602.3 Contents of fishery management plans.
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Authority: 16 U.S.C. 1851; sec. 301(b), Pub. L. 94-265, unless otherwise noted.

Source: 42 FR 34458, July 5, 1977, unless otherwise noted.

§ 602.1 Purpose and scope.

(a) A major purpose of the Fishery Conservation and Management Act is to provide for the preparation and implementation, in accordance with National Standards, of fishery management plans that will achieve and maintain, on a continuing basis, the optimum yield from each fishery covered by the exclusive fishery management authority established by the Act.

(b) Title III of the Act establishes seven National Standards for fishery conservation and management. Any fishery management plan prepared either by the Regional Councils or the Secretary and any regulation promulgated to implement a plan shall be consistent with these National Standards. The Secretary is required to establish guidelines based on the National Standards, to assist in the development of fishery management plans.

(c) This part accordingly constitutes the Secretarial Guidelines for fishery management plan development based upon the National Standards. It contains explanatory comments with regard to these National Standards, guidance regarding the content of fishery management plans and for various other procedures involved in the development, submission, review and amendment of plans process.

§ 602.2 National standards for fishery conservation and management.

(a) *General.* Each fishery management plan, and any amendment to such plan, prepared by any Council and submitted to the Secretary will be reviewed by the Secretary for approval, disapproval, or partial disapproval. The review will involve a determination of whether the proposed plan is consistent with The National Standards, the other provisions of the Act, and any other applicable law (section 304(b)).

(1) *Purpose.* This section provides explanatory comments with respect to the National Standards so as to assist the Councils in preparing fishery management plans and amendments that are consistent with the National Standards.

(2) *Definitions*—(i) *Habitat.* Habitat is that combination of physical, chemical, and biological conditions and factors necessary for the completion of the life functions of any marine animal or plant that is to be managed under the Act.

(ii) *Management unit.* Any species, stock, or group of species or stocks of fish that is geographically or ecologically interrelated or is affected as a group by fishing practices, that is capable of being managed as a unit on a rational and timely basis.

(b) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

(1) *Overfishing.* Overfishing is a level of fishing that results in a reduction in the capacity of a management unit to produce maximum biological yield on a sustained basis for specified habitat and environmental conditions.

(2) *Maximum sustainable yield* (MSY). The MSY from a fishery is the largest average annual catch or yield in terms of weight of fish caught by both commercial and recreational fishermen that can be taken continuously from a stock under existing environmental conditions. A determination of MSY, which should be an estimate based upon the best scientific information available, is a biological measure necessary in the development of optimum yield.

(3) *Optimum yield concept.* (i) The concept of optimum yield is broader than the consideration of only the stocks of fish. It takes into account

the economic well-being of the commercial fishermen, the interests of recreational fishermen, the habitat quality and the national interest in conservation and management of the fisheries as expressed in section 2, and the National Standards in section 301(a) of the Act. Optimum yield:

(A) Recognizes resource uses and values other than harvesting;

(B) Allows for the importance of quality to the recreational fishing experience;

(C) Considers social and economic factors as important criteria in setting harvest rates;

(D) Recognizes the need for fisheries products; and

(E) Considers the present extent and condition of the habitat as well as long term changes.

(ii) The optimum yield for a particular fishery will seldom, if ever, be a constant quantity over time since the condition of the fishery resource and the desires of the users may change. Periodic adjustments of harvest quotas, rates, and methods may be needed.

(4) *Optimum yield and management objectives.* The determination of optimum yield for a particular fishery will depend heavily upon the objectives that must be determined and adopted by the Councils with the assistance of their advisory groups and in consideration of the views of user groups and the general public. Relative weighting of the elements of the optimum yield determination will be influenced by both regional objectives and national considerations (as set forth in section 3(18) of the Act). Rarely will a fishery be managed to meet a single objective. Objectives sought may conflict to a degree with one another. Consequently, priority decisions must be made in developing objectives.

(5) *Optimum yield and foreign fishing.* Section 201(d) of the Act provides that fishing by foreign nations is limited to that portion of the optimum yield of any fishery subject to the fishery management authority of the United States which will not be harvested by vessels of the United States. In determining whether U.S. fishermen will not harvest an optimum yield, the Councils are to consider the capacity and extent to which fishing vessels of the United States will harvest such optimum yield, including U.S. harvested fish which will be received at sea by foreign vessels. Both the optimum yield and the total "surplus" that can be made available for foreign fishing are to be included in fishery management plans and amendments to such plans. Fishery management plans and amendments to such plans shall estimate the amount of fish expected to be harvested by U.S. vessels and received at sea by foreign vessels.

(c) *Standard 2.* Conservation and management measures shall be based upon the best scientific information available.

(1) *Scientific information.* The term "scientific information" is meant to include information of a biological, ecological, economic, and social nature. Success of a fishery management plan depends on the quantity and quality of its scientific and technical information, the thorough analysis of this information, and the degree to which it is applied.

(2) *Standardization of information.* State and Federal suppliers of technical data to the Councils should give consideration to the comparability and compatibility of their respective data sets. The Councils, by means of fishery management plans, shall specify pertinent data to be submitted with respect to the fishery. Council guidance concerning standardizing the methods of obtaining and presenting such data expected from a variety of sources and areas would facilitate data collection, analysis, and evaluation.

(3) *Availability of information.* The type and extent of scientific information available may vary substantially from fishery to fishery. The lack of complete scientific information concerning a fishery shall not prevent the preparation and implementation of a fishery management plan. Councils should identify information gaps and indicate the need for acquisition of additional information. As better data become available, plans should be modified.

(d) *Standard 3.* To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(1) *Management unit.* It is expected that the management unit will incorporate the entire range of a stock of fish to the extent practicable. Also, a unit should, to the extent practicable, comprise several stocks that are ecologically interrelated or are affected as a group by fishing practices. Management units may be broadly defined to take account of the multitude of fishing practices that can include effort directed toward:

(i) A single stock of fish found in a certain area; (ii) different stocks of fish caught by the same vessels or gear; (iii) all the stocks in a certain area, and so on.

(2) *Jurisdiction.* Unity of management, or at least cooperation between various jurisdictional authorities (e.g., State, Council, Federal Government), is vital to prevent jurisdictional disputes from adversely affecting conservation practices. Where management units cross Council or Federal-State boundaries, coordination should be sought among the several fishery managers and Councils in the development of plans and regulations. The occurrence of a stock in a given Council area does not necessarily mean that a plan will be written specifically for that limited Council area. Where a stock's range overlaps Council areas, one plan may be written to cover the entire range.

(3) *Interrelationship of species/habitat.* The broad, long term goal of the several plans developed by each Council should be to optimize the benefits from the total weight of all forms of marine animal and plant life within the Council area of authority. This goal requires an emphasis upon management of interrelated groups of species. Management plans should also address the impact of pollution and the effects of wetland and estuarine degradation upong the stocks of fish throughout their range.

(e) *Standard 4.* Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (1) fair and equitable to all such fishermen; (2) reasonably calculated to promote conservation; and (3) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(1) *Equity in allocation.* Allocation is an important component of fishery management. Allocations among present users and between present and future users should be calculated to promote conservation and to take into consideration both public and private interests. When allocation of fishing privileges becomes necessary among U.S. fishermen, e.g., among recreational or commercial fishermen or different gear types, it must be done fairly. The requirement for fairness and equity should ensure that attention is given to the preservation of the quality of the recreational fishing experience with respect to any species of substantial interest to recreational fishermen. In determining fair and equitable allocations, considerable attention should be given to the economic and social consequences of alternative allocation schemes. Any plan must provide for fair and equal treatment of U.S. citizens and corporations operating or engaging in the fisheries concerned without regard to their particular state of residence or incorporation.

(2) *Traditional fishing.* Traditional or historic fishing patterns will also be considered when allocation of fishing privileges is necessary.

(3) *Right of entry.* The opportunity of new participants to enter a fishery should be protected wherever feasible and in a manner which prevents excessive fishing effort.

(f) *Standard 5.* Conservation and management measures shall where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(1) *Efficiency in the utilization of fishery resources.* This standard is intended to promote the efficiency of the three elements of utilization: harvesting, processing, and marketing of fishery products.

(2) *Economic efficiency.* (i) Economic efficiency may be regarded as one of many factors to be considered in the

development of a plan. Councils will be involved in decisions about the distribution of costs and benefits, provision of employment opportunities, changes in the rate and composition of regional economic development, environmental effects, etc. To follow efficiency principles exclusively may not provide the greatest overall benefits to the Nation or necessarily reduce costs to the consumer. Accordingly, both the advantages and disadvantages of "efficiency" will have to be carefully weighted in the context of the objectives for the particular fishery involved.

(ii) Economic analyses made during plan development and amendment will provide a basis for management choices concerning economic efficiency. Where limited access systems are recommended, an economic analysis of such factors as the effects on the price of fish, or the price of vessels, or alternative employment problems, etc., will be necessary for an informed decision regarding the implementation of such systems.

(3) *Economic allocation.* Where conservation and management measures are recommended for economic allocation and for other purposes, due consideration shall be made of the biological, ecological and social consequences of such measures.

(g) *Standard 6.* Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources and catches.

(1) *Causes of variations.* There can be great uncertainty with regard to the location, size, and even the existence of fish stocks. Historic "peaks" and "valleys" in annual catches, changes in environmental conditions, and species replacement in various areas provide indicators of the types of variations to be expected. Changes in habitat conditions may alter population levels. Variations are also to be expected in harvesting effort, fishing strategy, and gear efficiency within a fishery.

(2) *Flexibility in plan development and implementation.* Sufficient flexibility must be built into the fishery management process to allow for timely response to unforeseen changes, either mancaused, (e.g., change in catch size) or natural, (e.g., spawning failure). To the extent that information is available, every effort should be made to develop fishery management plans that take into account these variations and provide a suitable buffer in favor of conservation. In evaluating the need for flexibility, consideration should be given to the completeness of fishery data available, future availability of improved data, and the ability of the fishery to adjust to new regulations. Constant acquisition and analysis of fishery and resource data will help reduce uncertainty. Councils should respond to changes in the fishery and the resource and additional information by amending management plans and by proposing improved management techniques.

(h) *Standard 7.* Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. A continuing goal of management is to eliminate, to the extent feasible, unnecessary costs of doing business. It is particularly important in a cooperative management regime that all entities involved take such steps as are necessary to ensure full utilization of available capabilities. Cost effectiveness should be sought through the process of optimizing existing capabilities, rather than at the expense of program objectives or program effectiveness. The costs of the proposed management regime, including enforcement, should be carefully evaluated in relation to the anticipated benefits.

(16 U.S.C. 1801 et seq.)

[42 FR 34458, July 5, 1977, as amended at 44 FR 7710, Feb. 2, 1979]

§ 602.3 Contents of fishery management plans.

(a) *General.* Section 303 of the Act addresses, among other things, required and discretionary contents of fishery management plans prepared either by the Council or by the Secretary. This section provides explanatory comments and gives guidance with respect to the contents of plans to assist the Councils in preparation of plans consistent with the National

Standards (see § 602.2) and the standard format (see § 602.4). Those provisions which are discretionary under section 303(b) of the Act are marked "Discretionary" in the following comments.

(b) *Explanatory comments*—(1) *Cover sheet.* Provide a cover sheet for the purpose of ready identification of the plan, the subject fishery, and the responsible Council(s), date of Council approval, and the signature(s) of the responsible Council official(s).

(2) *Summary.*

(3) *Table of contents.*

(4) *Introduction.* Describe the development (or amendment) of the plan by the responsible Council(s) and the overall management objectives.

(5) *Description of the stock(s) comprising the management unit*—(i) *Species or group of species and their distribution.* Provide a biological description and the geographical distribution of the species or group of species comprising the management unit as identified by the Council.

(ii) *Abundance and present condition.* Assess and specify the present abundance and biological condition of the stock(s).

(iii) *Ecological relationships.* Describe the relationship of the stock(s) with fish, animals, or plants, including discussions of relevant food chain and predator-prey relationships.

(iv) *Estimate of MSY.* Specify the MSY of the stock(s) based upon the best scientific information available. Summarize the information used in making the specification.

(v) *Probable future condition.* Specify the probable future condition of the stock(s), if present conditions and trends continue.

(6) *Description of habitat of the stock(s) comprising the management unit*—(i) *Conditions of the habitat.* Describe the habitat, factors affecting its productivity, and probable future condition, if present condition and trends continue.

(ii) *Habitat areas of particular concern.* Identify and describe the habitat areas which are of particular concern because of a requirement in the life cycle of the stock(s), e.g., spawning grounds, nurseries, migratory routes, etc. Identify those areas which are currently or potentially threatened with destruction or degradation.

(iii) *Habitat protection programs.* Describe programs to protect or restore the habitat of the stock(s) from destruction or degradation, including the relationship of any approved Coastal Zone Management Programs in the affected State(s). The plan proposed by a Council should be consistent with such approved program(s) in accordance with the Coastal Zone Management Act (See § 601.21(b)(3).)

(7) *Fishery management jurisdiction, laws, and policies*—(i) *Management institutions.* Identify and describe the institutions which have fishery management authority over the stock(s) throughout their range.

(ii) *Treaties or international agreements.* Identify and describe applicable treaties with foreign nations or international fishery agreements which affect the management unit, either directly by control of fishing or indirectly by control of fishing for a related stock, e.g., a predator or prey of the subject stock(s).

(iii) *Federal laws, regulations, and policies.* Identify and describe the impact of any applicable Federal laws, regulations, and policies upon the management unit of fishing thereon.

(iv) *State laws, regulations, and policies.* Identify and describe the impact of any applicable State laws, regulations, and policies upon the management unit or fishing thereon.

(v) *Local and other applicable laws, regulations, and policies.* Identify and describe the impact of any local and other applicable laws, regulations, and policies upon the management unit or fishing thereon. This includes, where applicable, Indian treaty fishing rights embodied in treaties, case law, or other agreements.

(8) *Description of fishing activities affecting the stock(s) comprising the management unit*—(i) *History of exploitation.* Summarize the historical fishing practices, both foreign and domestic. Identify past user groups, vessel and gear types and quantities, and fishing areas.

(ii) *Domestic commercial and recreational fishing activities.* A complete description of current domestic fishing activities involving the management unit is required including commercial, recreational, subsistence, and Treaty Indian fishing. The description shall include, where applicable:

(A) Participating user groups;

(B) Vessels and fishing gear;

(C) Employment in recreational and commercial sectors;

(D) Fishing and landing areas utilized throughout the range of the stock;

(E) Conflicts among domestic fishermen involving competition for fishing areas, gear damage, etc.;

(F) Amount of landings/catches;

(G) Assessment and specification of the U.S. harvesting capacity; and

(H) Assessment and specification of the extent to which, on an annual basis. U.S. fishing vessels will harvest the optimum yield as specified by the Council.

(I) Assessment and specification of the portion of the optimum yield which U.S. harvesters propose to deliver to foreign vessels.

Detailed tables may be included in the Appendix.

(iii) *Foreign fishing activities.* The description of current foreign fishing activities shall include, where applicable:

(A) Participating nations;

(B) Vessels, harvesting and support, and fishing gear;

(C) Fishing and landing areas; and

(D) An enumeration of landings and value as distributed among the stock(s) comprising the management unit.

(iv) *Interactions between domestic and foreign participants in the fishery.* (A) Describe the interactions between domestic and foreign fishermen utilizing the stock(s) including gear or other conflicts. Identify any problems caused by fishermen of one nation taking as by-catch, a target fish of another nation's fishery.

(B) Describe and quantify the amount or tonnage of any transfers at sea, or proposed transfers, of the stock(s) comprising the management unit from U.S. harvesters to foreign vessels.

(v) *Domestic processing capacity.* Assess and specify the capacity and extent to which U.S. fish processors, on an annual basis, will process the stock(s) comprising the management unit. In assessing the extent to which U.S. fish processors will process the stock(s), the following factors, as appropriate, shall be considered:

(A) Any contracts or other agreements for the purchase of U.S. harvested fish by U.S. fish processors;

(B) The ability, and intent to utilize that ability, of U.S. processors to process a particular species;

(C) Considerations such as geographical proximity of harvest areas to the facilities of U.S. fish processors, especially in relation to the refrigeration/freezing capability of potential U.S. fish harvesting vessels;

(D) Recent history of the extent to which U.S. fish processors have processed particular species;

(E) Availability and capacity of the labor force, processing machinery, freezers and cold storage facilities of U.S. fish processors and their intent and plans to increase availability or capacity in order to process a particular species;

(F) Seasonal schedules of the U.S. fish processors; and

(G) Availability of U.S. harvesting vessels to supply the stock(s) comprising the management unit taking into consideration such things as capability of vessels to fish the species in the fishery, seasonal schedules, and relative availabilities and prices of alternative fisheries.

(9) *Description of economic characteristics of the fishery*—(i) *Domestic harvesting sector.* Describe the value of the catch (ex-vessel). Identify the method of value determination, especially when the value is estimated or based upon non-market pricing. The description of the economic statistics of the commercial fleet should include: gross income, investment costs and revenues, measurement of effort, measurement of efficiency, and measurement of productivity. The description of the economic statistics of recreational fishing should include: investment, revenues, and tourism.

(ii) *Domestic processing sector.* Describe the wholesale products and their values. Specify the degree of dependence of the processing sector upon products from the fishery.

(iii) *Other sectors of the U.S. fishing industry.* Describe the dependence of other sectors of the U.S. fishing industry on the fishery. Include the dependence of labor, suppliers and provisioners, as well as fishing communities.

(iv) *International trade.* Describe the international trade in relevant fishery products. Describe and discuss existing and proposed international business arrangements affecting the stock(s).

(10) *Description of the businesses, markets, and organizations associated with the fishery*—(i) *Relationship among harvesting, brokering, and processing sectors.* Describe the relationships among the harvesting, brokering, and processing sectors which catch, sell, transport, and process the catch from the domestic fishery.

(ii) *Fishery cooperatives or associations.* Identify the fishery cooperatives or associations involved with the fishery.

(iii) *Labor organizations.* Identify the labor organizations involved with the harvesting and processing sectors.

(iv) *Foreign investment.* Describe the foreign investment in the domestic sectors of the fishery.

(11) *Description of social and cultural framework of domestic fishermen and their communities*—(i) *Ethnic character, family structure, and community organization.* Describe where relevant.

(ii) *Age and education profiles of fishermen.*

(iii) *Employment opportunities and unemployment rates.* Identify the employment opportunities within the fishery, in other fisheries, and in nonfishing related work in the geographical area concerned. Compare the current unemployment rate among fishermen and the applicable labor force in the same geographical area. Describe the relationship of seasonality in fishing employment to alternate forms of employment, or to unemployment.

(iv) *Recreational fishing.* Describe the social and cultural characteristics of fishermen who participate in the recreational sector of the fishery. Identify the social and cultural benefits generated by the recreational sector of the fishery.

(v) *Economic dependence on commercial or marine recreational fishing and related activities.* Describe the economic dependence of fishermen and others on commercial or marine recreational fishing, including, fishery related activities, e.g., gear manufacture and repair.

(vi) *Distribution of income within the fishery communities.* Describe the sources and distribution of income within the communities of fishermen.

(12) *Determination of optimum yield*—(i) *Specific management objectives.* Each fishery management plan must specify the management objectives to be attained.

(ii) *Description of alternatives.* Describe the alternative optimum yields considered and their advantages and disadvantages.

(iii) *Analysis of beneficial and adverse impacts of potential management options.* In considering various conservation and management measures in order to determine which are necessary and appropriate for the conservation of the fishery resource, management of the fishery, and to achieve the optimum yield, the beneficial and adverse impacts of such measures must be analyzed. These impacts should be identified and described, to the extent possible, in summary form. Additional detail may be included in the appendix of the plan.

(iv) *Tradeoffs between the beneficial and adverse impacts of the preferred or optimal management option(s).* Conservation and management measures shall be identified which are deemed by the Council to be the preferred or optimal means of achieving optimum yield. Such measures will, in all likelihood, contain or represent tradeoffs between the specific management objectives identified in the plan. It may not be feasible or possible to optimize each management objective as some may contain unavoidable conflicting aspects. The tradeoffs between the beneficial and adverse ecological, social, and economic impacts of the preferred or optimal management option(s) should be described in summary form. Detailed analyses or comparisons may be included in the appendix of the plan.

(v) *Specification of optimum yield.* Each fishery management plan shall assess and specify the optimum yield determined to be the amount of fish, with respect to the yield from the fishery, which will provide the greatest overall benefit to the Nation (see section 3(18) of the Act).

(13) *Measures, requirements, conditions, or restrictions specified to attain management objectives*—(i) *Permits and fees.* (Discretionary) A plan may require a permit to be obtained from and fees to be paid to, the Secretary with respect to any fishing vessel of the United States, fishing, or wishing to fish, in the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone. The amount of fees charged domestic fishermen is to be established by the Secretary, but shall not exceed ther administrative costs incurred by the Secretary in issuing permits.

(ii) *Time and area restrictions.* (Discretionary) A plan may designate zones or areas where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear. These restrictions must be related to the management objectives of the plan.

(iii) *Catch limitations*—(A) *Total allowable level of foreign fishing.* Where a portion of the optimum yield can be made available for foreign fishing, the Council shall specify the total allowable level of such foreign fishing.

(B) *Types of catch limitations.* (Discretionary) The plan may specify limitations on the catch of fish (based on area, species, size, numbers, weight, sex, incidental catch, total biomass, or other factors), which are necessary and appropriate for the conservation and management of the fishery.

(iv) *Types of vessels, gear, and enforcement devices.* (Discretionary) A plan may prohibit, limit condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the Act.

(v) *State, local, and other laws and policies.* (Discretionary) The plan may incorporate (consistent with the National Standards, the other provisions of the Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery (or local government or other entity).

(vi) *Limited access systems.* (Discretionary) A plan may establish a system for limiting access to the fishery in order to achieve optimum yield if, in developing such system, the following considerations are taken into account and discussed in the plan:

(A) Present participation in the fishery;

(B) Historical fishing practices in, and social and economic dependence on, the fishery;

(C) The economics of the fishery;

(D) The capability of fishing vessels used in the fishery to engage in other fisheries or other pursuits;

(E) The cultural and social framework relevant to the fishery; and

(F) Any other relevant considerations such as existing State conservation and management measures. Any plan containing a limited entry system shall also discuss why other management measures are inadequate for conservation and management of the fishery. Limited access is a management technique that is directed at economic as well as biological objectives. This technique is used to reduce the congestion and economic waste that often occurs from the "open access" condition of common property fisheries. Any system of limited access shall be for the purpose of conservation and management, and economic allocation shall not be its sole purpose (see also § 602.2 (e) and (f)).

(vii) *Habitat preservation, protection, and restoration.* A plan may propose measures which are intended to preserve, protect, and restore habitat determined to be necessary for the life functions of the stock(s). Where the Secretary does not have the authority to implement such measures, the appropriate State, Federal, or international entity will be informed by the Secretary of the findings and the proposed measures.

(viii) *Development of fishery resources.* A plan may identify those fishery resources associated with the stock(s) which are underutilized or not utilized by U.S. fishing industry. Such information may be useful in encouraging the development of such fisheries (see section (2)(b)(6) of the Act).

(ix) *Management costs and revenues.* Describe the estimated governmental costs and revenues likely to be incurred and received in implementation of the proposed measures.

(14) *Specification and source of pertinent fishery data*—(i) *General.* The plan shall specify pertinent data that shall be submitted to the Secretary by participants in the fishery. Specifications of data shall take into account the effort necessary to collect such data. Effort should be minimized through careful selection and standardization of data elements, the periodicity of collection, recordkeeping, and reporting. Regulations with regard to the confidentiality of these statistics are set forth in Part 603. [Reserved].

(ii) *Domestic and foreign harvesters.* The data specified shall include, but are not limited to, information as to type and quantity of gear, catch by species in numbers of fish or weight, fishing effort, fishing areas, time of fishing, number of hauls, numbers or weight of fish received at sea by foreign vessels from U.S. harvesting vessels and other data considered pertinent.

(iii) *Processors.* The plan shall specify the data that shall be submitted by fish buyers, processors, etc., who purchase, transport, and process the catch of the stock(s). The data specified may include, but are not limited to:

(A) The amount or tonnage of fish purchased, transported, and/or processed, by species.

(B) Locations at which fish are received and/or processed, by species.

(C) Limitations as to seasons, quantities, or quality standards of fish which apply to fish received and/or processed, by species.

(D) Disposition of the fish received or processed, by species.

(E) Prices paid for fish received, by species.

(F) The amount or tonnage which the processor expects to purchase, transport, and/or process, by species, by year.

(15) *Relationship of the recommended measures to existing applicable laws and policies*—(i) *Fishery management plans.* Identify and discuss the relationship of the recommended measures for the fishery to other approved fishery management plans for other fisheries prepared by a Council or the Secretary.

(ii) *Treaties or international agreements.* Identify and discuss the relationship of the recommended measures for the fishery to any treaties with foreign nations or international fishery agreements which affect the stock(s) or fishing thereon.

(iii) *Federal law and policies.* Identify and discuss existing applicable Federal laws and policies which may constrain implementation of the recommended measures and provision of specified fishery data.

(iv) *State, local, and other applicable laws and policies.* Identify and discuss existing applicable laws and policies which may constrain implementation of the recommended measures and provision of specified fishery data. This shall not be construed to mean that a recommended measure shall abrogate any Indian Treaty fishing rights embodied in treaties, case law, or other agreements.

(16) *Council review and monitoring of the plan.* Discuss generally the procedures the Council and its advisory groups would use to review and revise the plan.

(17) *References.* List the references cited in the plan.

(18) *Appendix*—(i) *Sources of data and methodology.* Identify the source of data presented in summary form in the plan. Detailed data, analyses thereof, and methodology may be included.

(ii) *List of public meetings and summary of proceedings.* List the public meetings held in the development of the plan, with each meeting identified by location, date, number of the public attending, and a brief summary of comments received.

(16 U.S.C. 1801, et seq.)

[42 FR 36981, July 18, 1977, as amended at 44 FR 7710, Feb. 7, 1979]

§ 602.4 Standard format for fishery management plans.

(a) *General.* One of the guidelines established to assist the Councils in the development of fishery management plans is a standard format. The format is a broad framework within which individual plans for specific fisheries may be designed in accordance with § 602.2, National standards for fishery conservation and management, § 602.3, Contents of fishery management plans, and section 302 of the Act. The format is recommended to the Councils as a uniform structure for the organization and presentation of the major elements that must be addressed in a plan to be reviewed by the Secretary. If any portion of the standard format is inappropriate for any plan, the responsible Council may modify the format accordingly.

(b) *Format.* (1) Cover sheet.

(2) Summary.

(3) Table of contents.

(4) Introduction.

(5) Description of stock(s).

(i) Species or group of species and their distribution.

(ii) Abundance and present condition.

(iii) Ecological relationships.

(iv) Estimate of MSY.

(v) Probable future condition.

(vi) Other.

(6) Description of habitat.

(i) Condition of habitat.

(ii) Habitat areas of particular concern.

(iii) Habitat protection programs.

(iv) Other.

(7) Fishery management jurisdiction, laws, and policies.

(i) Management institutions.

(ii) Treaties or international agreements.

(iii) Federal laws, regulations, and policies.

(iv) State laws, regulations, and policies.

(v) Local and other applicable laws, regulations, and policies.

(8) Description of fishing activities.

(i) History of exploitation.

(ii) Domestic commercial and recreational fishing activities.

(iii) Foreign fishing activities.

(iv) Interactions between domestic and foreign participants in the fishery.

(v) Domestic processing capacity.

(9) Description of economic characteristics of the fishery.

(i) Domestic harvesting sector.

(ii) Domestic processing sector.

(iii) International trade.

(10) Description of businesses, markets, and organizations associated with the fishery.

(i) Relationship among harvesting, brokering, and processing sectors.

(ii) Fishery cooperatives or associations.

(iii) Labor organizations.

(iv) Foreign investment.

(11) Description of social and cultural framework of domestic fishermen and their communities.

(i) Ethnic character, family structure, and community organization.

(ii) Age and education profiles of fishermen.

(iii) Employment opportunities and unemployment rates.

(iv) Recreational fishing.

(v) Economic dependence on commercial or marine recreational fishing and related activities.

(vi) Distribution of income within the fishery communities.

(vii) Other.

(12) Determination of optimum yield.

(i) Specific management objectives.

(ii) Description of alternatives.

(iii) Analysis of beneficial and adverse impacts of potential management options.

(iv) Tradeoffs between the beneficial and adverse impacts of the preferred or optimal management option(s).

(v) Specification of optimum yield.

(13) Measures, requirements, conditions, or restrictions specified to attain management objectives.

(i) Permits and fees.

(ii) Time and area restrictions.

(iii) Catch limitations.

(A) Total allowable level of foreign fishing.

(B) Types of catch limitations.

(iv) Types of vessels, gear, and enforcement devices.

(v) State, local, and other laws and policies.

(vi) Limited access systems.

(vii) Habitat preservation, protection, and restoration.

(viii) Development of fishery resources.

(ix) Management costs and revenues.

(x) Other.

(14) Specification and source of pertinent fishery data.

(i) General.

(ii) Domestic and foreign harvesters.

(iii) Processors.

(15) Relationship of the recommended measures to existing applicable laws and policies.

(i) Fishery management plans.

(ii) Treaties or international agreements.

(iii) Federal law and policies.

(iv) State, local, and other applicable laws and policies.

(16) Council review and monitoring of the plan.

(17) References.

(18) Appendix.

(i) Sources of data and methodology.

(ii) List of public meetings and summary of proceedings.

(16 U.S.C. 1801 et seq.)

[42 FR 36983, July 18, 1977, as amended at 44 FR 7710, Feb. 7, 1979]

§ 602.5 Procedures for development, review, and amendment of fishery management plans.

(a) *Plans prepared by the Councils.* In preparing a fishery management plan, a Council shall:

(1) *Identify fisheries to be managed.* The Council shall assess all the fisheries within the geographical area of authority. It will be the Council's responsibility, after consultation with the Secretary, to identify those fisheries requiring plan development and to set priorities for plan development.

(2) *Develop management options.* The Council shall assemble and analyze all relevant information (e.g., biological, economic, social, ecological, user, and constituency) with regard to a particular fishery and develop specific technical management options. The Secretary and the Secretary of State shall furnish the Councils with information concerning foreign fishing and international fishery agreements. Scientific and technical information will be available to the Councils from a variety of sources, including the National Marine Fisheries Service's Regional Offices and Research Centers, the States, private institutions, other Councils, and any interested persons.

(3) *Select preferred management options; complete final plan.* (i) Consideration of the management options shall be made by the Council and its advisory groups. The Council shall select the preferred management options that are to be the basis of the final plan, and shall prepare a final plan for submission to the Secretary.

(ii) The Council's decision to approve a plan prior to submission to the Secretary must be made by a vote of the majority of the voting members present and voting. When a plan has been prepared jointly by more than one Council at the direction of the Secretary, it must be approved by a majority of the voting members present and voting, of each Council concerned prior to submission to the Secretary.

(4) *Consult with other Councils.* A Council shall consult with appropriate Councils when the Secretary has designated a single Council to prepare a plan for a management unit that extends into the geographical area of authority of other Councils or when the Secretary has designated more than one Council to prepare a plan jointly. (See § 601.11(c)(2).)

(5) *Receive and consider public comment.* The Council shall solicit, through public hearings and any other appropriate means, the advice and recommendations from all interested persons during the development of plans and amendments to such plans. Such persons include the States, the fishing industry (recreational and commercial), consumer and environmental organizations, and others.

(6) *Comply with requirements of the National Environmental Policy Act* (as set forth in § 601.21(b)(1), and in § 602.6 [Reserved]).

(7) *Coordinate fishery management plan development with coastal zone programs of constituent States under the Coastal Zone Management Act.* (See § 601.21(b)(3).)

(8) *Prepare fishery management plans consistent with the National Standards* (see § 602.2), *the guidelines contained herein, other provisions of the Act, and any other applicable law.*

(b) *Submission to the Secretary of Commerce.* Once a plan has been prepared and approved by a Council, it shall be submitted, along with any dissenting opinions, and with appropriate copies, directly to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, by the most expeditious means available that are commensurate with safeguards against loss enroute.

(c) *Council action on plans prepared by the Secretary*—(1) *General.* The Secretary may prepare a fishery management plan with respect to any fishery, or any amendment to any such plan, if:

(i) A Council fails to develop and submit to the Secretary, after a reasonable period of time, a plan for such fishery, or any necessary amendment to such a plan, if the fishery requires conservation and management; or

(ii) The Secretary disapproves or partially disapproves any such plan or amendment submitted by a Council and the Council fails to make the necessary changes within 45 days after the date on which the Council receives notification by the Secretary.

(2) *Comments of Council.* Whenever the Secretary prepares a fishery management plan or amendment, the Secretary shall promptly transmit such plan or amendment to the appropriate Council for consideration and comment. Within 45 days after the date of receipt of such plan or amendment, the Council may recommend to the Secretary changes in such plan or amendments consistent with the National Standards, the other provisions of the Act and any other applicable law. A Council may conduct public hearings to allow interested persons to comment on such a plan, and should incorporate such public comment, if any, in the Council recommendations to the Secretary for changes in the plan or amendment.

(3) *Failure of Council to comment.* If the Council does not propose changes within 45 days after it receives the submission from the Secretary, the Secretary may proceed to adopt and implement the plan or amendment.

(d) *Amendments to fishery management plans*—(1) *Council review.* The Act directs each Council to review on a continuing basis, and revise as appropriate, the assessments and specifications made regarding the optimum yield from, the capacity and extent to which U.S. fish processors will process U.S. harvested fish from, and the total allowable level of foreign fishing in, each fishery within its geographical area of authority.

(2) *Scope of review.* This review of each plan should also include reexamination of the management objectives and the effectiveness of conservation and management measures and implementing regulations. At least once each year, and more often where appropriate, each Council must assess the accuracy of the estimates of MSY and optimum yield, the capacity and extent to which U.S. fish processors will process U.S. harvested fish, and the total allowable level of foreign fishing for each plan implemented regardless of whether the plan is prepared by a Council or by the Secretary.

(3) *Amending the plan.* Based on this review, or for other reasons, a Council may amend the plan. The procedures for Council preparation and approval of an amendment (e.g., hearings, majority vote, and transmittal to the Secretary) are the same as those that apply to a management plan. The same procedures as for a plan also apply when an amendment is disapproved or partially disapproved by the Secretary and returned to the Council for modification.

(e) *Proposed regulations.* A Council may recommend to the Secretary any proposed regulations which it deems necessary and appropriate to carry out any plan, or any amendment to any plan. Proposed regulations shall be submitted as a separate document, together with such plan or amendment, to the Secretary. The Secretary has the final responsibility to determine whether to adopt any proposed regulations recommended by a Council.

(16 U.S.C. 1801 et seq.)

[42 FR 34458, July 5, 1977, as amended at 44 FR 7710, Feb. 7, 1979]

§ 602.6 Compliance with NEPA. [Reserved]

PART 603—CONFIDENTIALITY OF STATISTICS

Sec.
603.1 Purpose.
603.2 Definitions.
603.3 Types of statistics covered.
603.4 Collection and maintenance of statistics.
603.5 Access to statistics.
603.6 Controls system.
603.7 Release of statistics.

AUTHORITY: 5 U.S.C. 301; 16 U.S.C. 1853(d).

SOURCE: 44 FR 70481, Dec. 7, 1979, unless otherwise noted.

§ 603.1 Purpose.

The purpose of this Part 603 is to prescribe procedures to preserve the confidentiality of any statistics submitted to the Secretary by any person in compliance with a requirement under a preliminary fishery management plan (PMP) or a fishery management plan (FMP).

§ 603.2 Definitions.

The terms used in this part shall have the same meaning as ascribed to them in section 3 of the Fishery Conservation and Management Act of 1976, as amended (16 U.S.C. 1801 *et seq.*) and part 601 of this chapter.

Aggregate or summary form, with respect to data, means data or information submitted by three or more persons that have been summed or assembled in such a manner so as not to reveal, directly or indirectly, the identity or business of any such person.

Assistant Administrator means the Assistant Administrator for Fisheries or his designee.

"Data", "statistics", and "information" are used interchangeably.

§ 603.3 Types of statistics covered.

This part applies to all information required to be submitted by any PMP or FMP or any regulation promulgated to implement a PMP or FMP, including, but not limited to: Information regarding the type and quantity of fishing gear used; catch by species in numbers of fish or weight thereof; areas in which fishing was engaged; time of fishing; number of hauls; and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors.

§ 603.4 Collection and maintenance of statistics.

(a) *General.* (1) All statistics required to be submitted to the Secretary under a PMP or FMP shall be provided to the Assistant Administrator.

(2) After receipt of the statistics submitted to the Assistant Administrator, the appropriate NMFS official shall delete all identifying particulars from the statistics at the first practicable opportunity consistent with the needs of the NMFS and good scientific practice.

(3) Appropriate safeguards as specified by NOAA Directives, or other NOAA or NMFS internal procedures, shall apply to the collection and maintenance of all statistics, whether separated from identifying particulars or not, so as to ensure their confidentiality.

(b) *Collection Agreements with States.* (1) The Assistant Administrator may enter into an agreement with a State authorizing the State to collect statistics on behalf of the Secretary.

(2) It is the policy of NMFS that NMFS will not enter into a cooperative collection agreement with a State unless the State has authority to protect the statistics from disclosure to the public in a manner similar to that of the Federal government, and in a manner consistent with these regulations.

§ 603.5 Access to statistics.

(a) *NOAA and NMFS personnel.* Statistics submitted as a requirement of a PMP or FMP and which will reveal the business or identity of the submitter shall only be accessible to:

(1) Personnel within NMFS responsible for the collection, processing, and storage of the statistics;

(2) Personnel within NMFS performing research that requires routine access;

(3) Other NOAA and NMFS personnel on a demonstrable need-to-know basis; and

(4) NMFS contractors that require access in order to perform functions authorized by the Federal contract.

(b) *State personnel.* (1) State access to, and use of, those statistics collected will depend upon the State's authority to require collection of the statistics on its own behalf.

(2) If the State has authority to collect the statistics in question but has no agreement with the Assistant Administrator, the State shall not have access to statistcs covered by this part which are submitted to the Assistant Administrator.

(c) *Prohibtions.* Persons having access to these data are prohibited from unauthorized use or disclosure, and are subject to the provisions of 18 U.S.C. 1905 and NOAA/NMFS internal procedures.

§ 603.6 Controls system.

(a) The Assistant Administrator shall institute a control system to protect the confidentiality of statistics submitted in compliance with a PMP or FMP. The control system will:

(1) Identify those persons who have routine access to the statistics;

(2) Contain procedures to identify non-routine users and their use of the data; and

(3) Provide for safeguarding the data.

(b) This system will require that all persons who have access to the data be informed of the confidentiality of the data. These persons shall be required to sign a statement that they:

(1) Have been informed that the data are confidential, and

(2) Have reviewed and are familiar with the procedures to protect data confidentiality.

§ 603.7 Release of statistics.

(a) The Assistant Administrator shall not disclosre to the public any statistics required to be submitted under a PMP or FMP in other than aggregate or summary form except as required by court order. Disclosure as required by court order shall be made only after approval of the NOAA Office of General Counsel.

(b) All requests for statistics submitted in response to a requirement of a PMP or FMP shall be processed consistent with NOAA Freedom of Information Act (FOIA) regulations (15 CFR Part 903), NOAA Directives Manual 21-25, Department of Commerce Administrative Orders 205-12 and 205-14, and 15 CFR Part 4.

(1) The Assistant Administrator shall have the authority to issue initial denials of requests subject to the FOIA for statistics submitted in response to a PMP or FMP. Initial denials shall indicate that exemption 3 of FOIA (5 U.S.C. 552(b)(3)) is the basis for denial, making specific reference to section 303(d) of the Act and reciting in its entirety the first sentence of that section. Furthermore, citing this regulation, the denial shall indicate that the application of section 303(d) is nondiscretionary and shall refer specifically to the appropriate portion of the applicable PMP, FMP, or implementing regulation that required the submission of the requested statisitcs. Exemption (b)(4) (5 U.S.C. 552(b)(4)), as well as other applicable FOIA exemptions, may be cited in addition, where appropriate.

(2) Appeals from initial denials should be addressed to the Administrator of NOAA, Department of Commerce, Washington, D.C. 20230. The Administrator shall not make a discretionary relase of statistics unless, upon review, it is determined that the Assistant Administrator improperly applied exemption (b)(3) to the requested statistics. In such cases the Administrator will instruct the Assistant Administrator to release the statistics to the requestor.

PART 611—FOREIGN FISHING

Subpart A—General

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AUTHORITY: 16 U.S.C. 1821 and 1855, unless otherwise noted.

SOURCE: 43 FR 59293, Dec. 19, 1978, unless otherwise noted.

Subpart A—General

§ 611.1 Purpose.

This part governs only *foreign* fishing over which the United States exercises exclusive fishery management authority under the Fishery Conservation and Management Act of 1976, as amended.

§ 611.2 Definitions.

In addition to the definitions contained in the Act, and unless the context requires otherwise, in this Part 611 the terms used shall have the following meaning (some definitions in the Act have been repeated here to aid fishermen in understanding the regulations):

(a) "Act" means the Fishery Conservation and Management Act of 1976, Pub. L. 94-265 (16 U.S.C. 1801 *et seq.*), as amended.

(b) "Agent" means the person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States with respect to an owner or operator in accordance with section 201(c)(2)(F) of the Act.

(c) "Anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters, including but not limited to:

King salmon (*Oncorhynchus tshawytscha*)
Pink salmon (*Oncorhynchus gorbuscha*)
Chum salmon (*Oncorhynchus keta*)
Sockeye salmon (*Oncorhynchus nerka*)
Silver salmon (*Oncorhynchus kisutch*)
Steelhead trout (*Salmo gairdneri*)
Atlantic salmon (*Salmo salar*)
Striped bass (*Morone saxatilis*)

(d) "Assistant Administrator" means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration (National Marine Fisheries Service) or a designee.

(e) "Authorized officer" means:

(1) Any commissioned, warrant or petty officer of the U.S. Coast Guard;

(2) Any certified enforcement or special agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce or Transportation to enforce the Act; and

(4) Any Coast Guard personnel accompanying and acting under the di-

rection of any person described in paragraph (1) of this definition.

(f) "Billfish" means all species of marlin, spearfish, sailfish and swordfish.

(g) "Continental Shelf" means the seabed and subsoil of the submarine areas which appertain to the United States beyond the territorial sea, at any place where the depth of the superjacent waters allows exploitation of the natural resources of such areas.

(h) "Continental Shelf fishery resources" means the following:

Colenterata

Bamboo coral (*Acanella* spp.)
Black coral (*Antipathes* spp.)
Gold coral (*Callagorgia* spp.)
Precious red coral (*Corrallium* spp.)
Bamboo coral (*Keratoisis* spp.)
Gold coral (*Parazoanthus* spp.)

Crustacea

Tanner crab (*Chionoecetes tanneri*)
Tanner crab (*Chionoecetes opilio*)
Tanner crab (*Chionoecetes angulatus*)
Tanner crab (*Chionoecetes bairdi*)
King crab (*Paralithodes camtschatica*)
King crab (*Paralithodes platypus*)
King crab (*Paralithodes brevipes*)
Lobster (*Homarus americanus*)
Dungeness crab (*Cancer magister*)
California king crab (*Paralithodes californiensis*)
California king crab (*Paralithodes rathbuni*)
Golden king crab (*Lithodes aequispinus*)
Northern stone crab (*Lithodes maja*)
Stone crab (*Menippe mercenaria*)
Deep-sea red crab (*Geryon Quinquedens*)

Mollusks

Red abalone (*Haliotis rufescens*)
Pink abalone (*Haliotis corrugata*)
Japanese abalone (*Haliotis kamtschatkana*)
Queen conch (*Strombus gigas*)
Surf clam (*Spisula solidissima*)
Ocean quahog (*Artica islandica*)

Sponges

Glove sponge (*Hippiospongia canaliculata*)
Sheepswool sponge (*Hippiospongia lachne*)
Grass sponge (*Spongia graminea*)
Yellow sponge (*Spongia barbera*)

(i) "Designated representative" means the person appointed by a nation and maintained within the United States who is responsible for receiving and submitting reports and other information concerning fishing by vessels from that nation.

(j) "Directed fishery" with respect to any species, means a fishery conducted for the purpose of catching that species.

(k) "Discard" or "discarded" means to release or return to the sea fish whether or not such fish are brought fully aboard a fishing vessel.

(l) "Existing International Fishery Agreement" means any treaty, convention or agreement, to which the United States is a party, which relates to fishing and which was in effect on April 13, 1976, namely:

(1) The International Convention for the High Seas Fisheries of the North Pacific Ocean, with Annex and Protocol of May 9, 1952, as amended; and

(2) The Convention for the Preservation of the Halibut Fishery of the North Pacific Ocean and the Bering Sea of March 2, 1953 (termination scheduled on March 31, 1979).

(m) "Fish" means finfish, mollusks, crustaceans, and all other forms of marine animal or plant life other than marine mammals, birds and highly migratory species.

(n) "Fish over which the United States exercises exclusive fishery management authority" means:

(1) All fish within the fishery conservation zone;

(2) All anadromous species beyond the fishery conservation zone, except when they are within any foreign nation's territorial sea or fishery conservation zone (or equivalent), to the extent that such sea or zone is recognized by the United States; and

(3) All Continental Shelf fishery resources beyond the fishery conservation zone.

(o) "Fishery" means:

(1) One or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; or

(2) Any fishing for such stocks.

(For related definitions, see: Directed fishery, paragraph (j) of this section; Incidental catch, paragraph (y) of this section; and Prohibited species, paragraph (bb) of this section.)

(p) "Fishery conservation zone" (FCZ) means the area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

(q) "Fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(r) "Fishing" means any activity, other than scientific research, which:

(1) Does, is intended to, or can reasonably be expected to result in the catching or removal from the sea of fish over which the United States exercises exclusive fishery management authority;

(2) Consists of scouting or exploring for the presence of such fish by visual, acoustic, or other means which do not involve removal of fish from the sea; or

(3) Consists of any operation at sea in support of, or in preparation for, any activity described in paragraphs (1) and (2) of this definition, including, but not limited to:

(i) Processing, including freezing, fish or fish products;

(ii) Transferring or transporting fish or fish products; or

(iii) Supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment, or other supplies.

(s) "Fishing vessel" means any boat, ship, or other craft which is used for, equipped to be used for, or of a type normally used for, fishing.

(t) "Foreign fishing" means fishing by a vessel other than a vessel of the United States.

(u) "Foreign fishing vessel" means any fishing vessel other than a vessel of the United States.

(v) "Gear conflict" means any incident at sea involving one or more fishing vessels:

(1) In which one fishing vessel or its gear comes into contact with another vessel or the gear of another vessel, and

(2) Which results in the loss of, or damage to, a fishing vessel, fishing gear, or catch.

(w) "Governing International Fishery Agreement" means an agreement between the United States and a foreign nation under Section 201(c) of the Act.

(x) "Highly migratory species" means the species of tuna which in the course of their life cycle spawn and migrate over great distances of the ocean, including, but not limited to:

Albacore (*Thunnus alalunga*)
Bigeye tuna (*Thunnus obesus*)
Bluefin tuna (*Thunnus thynnus*)
Skipjack tuna (*Euthynnus pelanis*)
Southern bluefin tuna (*Thunnus maccoyii*)
Yellowfin tuna (*Thunnus albacares*)

(y) "Incidental catch" means fish of any species, other than the directed fishery species, which are caught during a directed fishery.

(z) "Operator", with respect to any vessel, means the master or other individual on board and in charge of that vessel.

(aa) "Owner", with respect to any vessel means any person who owns that vessel or any charterer, whether bareboat, time, or voyage; or any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreeement, or any similar agreement that bestows control over the destination, function, or operation of the vessel.

(bb) "Prohibited species", with respect to any vessel, means any species of fish which that vessel is not specifically authorized to retain.

(cc) "Round weight" means whole fish weight.

(dd) "Secretary" means the Secretary of Commerce or a designee.

(ee) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States. It does not include the remaining districts of the Trust Territory of the Pacific Islands.

(ff) "Vessel day" means a unit of fishing effort measured by the presence, for any part of a day, of a vessel rigged for fishing (as defined in paragraph (r)(1) of this section) in a designated fishing area.

(gg) "Vessel of the United States" means:

(1) A vessel documented or numbered by the Coast Guard under United States law; or

(2) A vessel, under five net tons, which is registered under the laws of any State.

§ 611.3 Permits for foreign fishing vessels.

(a) No foreign fishing vessel may engage in fishing unless a permit has been issued to it under this section.

(b) Registration permits for foreign vessels to engage in fishing pursuant to an Existing International Fishery Agreement may be issued annually by the Secretary of State upon application from the foreign nation.

(c) Annual permits for foreign fishing vessels to engage in fishing pursuant to a Governing International Fishery Agreement may be issued by the Assistant Administrator after:

(1) His approval of an application from the foreign nation;

(2) The foreign nation's acceptance of the applicable terms and conditions;

(3) The payment of the fees established by the Secretary; and

(4) The designation of an agent.

(d) Each vessel will be authorized for one of the following activities:

Class 1: Catching, processing, and/or other support, as defined in § 611.2(r).

Class 2: Processing and/or other support, as defined in § 611.2(r)(2) and (r)(3).

Class 3: Other support, as defined in §§ 611.2(r)(2), 611.2(r)(3)(ii), and 611.2(r)(3)(iii).

(e) Applications for foreign vessel permits shall be submitted on forms available from: Office of Fisheries Affairs, Department of State (OES/OFA), Washington, D.C. 20520. To allow time for review and comments by the public, the involved governmental agencies, and appropriate fishery management councils, and the necessary processing, applications should be submitted to the Secretary of State at least 90 days prior to the date on which the foreign vessel desires to commence fishing under the proposed permit.

(f) The procedures for issuance of permits under paragraph (c) of this section and the commencement of activities thereunder are as follows:

(1) Permit Forms will be distributed to foreign nations in advance of permit issuance in order that they may be readily available for completion when permits are issued. The Permit Form provides spaces for insertion of all pertinent information contained in the permit and instructions for its use.

(2) Permits are issued by the Assistant Administrator, through the Secretary of State, in Washington, D.C., U.S.A. Permits are valid when issued, but not earlier than January 1 of the year for which the permit is issued. Permits are valid only for the specific vessel(s) for which they are issued. However, permits are not issued for small boats used for fishing which are launched from larger vessels. Each such small boat is an extention of its mothership and any enforcement action or permit sanction which might result from the activities of any such small boat would be taken against the mothership. A permit specifies the permit number for each permitted vessel, the fisheries and activities authorized for each permitted vessel, any other activities authorized, any additional conditions and restrictions applicable to a permitted vessel, and the date of issuance of the permit.

(3) A vessel may engage in fishing activities authorized in its permit only after:

(i) The permitted vessel has received notification of the permit number, the fisheries and activities authorized, any additional activities authorized, any applicable additional conditions and restrictions, and the date of issuance of the permit, and

(ii) The vessel has substantiated receipt of such notification by prominently displaying a properly completed Permit Form in the wheelhouse of such permitted vessel.

(4) If a permit is modified by the Assistant Administrator, the fisheries, activities, conditions and restrictions, as modified, must be recorded on the Permit Form and prominently displayed in the wheelhouse.

(5) The burden of accurately transmitting the notification of the contents of the permit (or modification) to the foreign fishing vessel, and the burden of accurately recording the

pertinent contents of the permit (or modification) on the Permit Form, shall be upon the foreign nation and the owner or operator of the foreign fishing vessel.

(g) If a foreign fishing vessel has been used in the commission of any act prohibited by § 611.7, or if an agent is not maintained within the United States, the Assistant Administrator may take appropriate action with respect to a permit issued under paragraph (c) of this section, under the administrative civil procedures specified in 50 CFR Part 621.

(h) Permits issued under this section do not authorize vessels or persons to engage in the kill, capture, or harassment of marine mammals. The requirements, restrictions and prohibitions applicable to marine mammals and the application procedures for permits to take marine mammals incidental to fishing operations are contained in 50 CFR 216.24.

(i) Permits issued under paragraph (c) of this section may be modified by the Assistant Administrator as follows:

(1) Because compliance with this Part 611 of the regulations is a condition of all foreign fishing permits, such permits may be modified by amendment of these regulations. Any such modification which would adversely affect activities under a permit will be effective no sooner than ten days after publication of the final amended regulation in the FEDERAL REGISTER. Other changes in the regulations may be made effective immediately. Notice of potentially adverse modifications will be sent by the Assistant Administrator to:

(i) Each nation whose fishing vessels are affected (via the Secretary of State); and

(ii) The owner of each affected fishing vessel (via the agent).

(2) The Assistant Administrator may modify any permit for purposes of "conservation and management" (as defined in section 3(2) of the Act) of fishery resources covered by the permit. Except as provided in subparagraph (2)(vii) of this paragraph such modifications will be effected as follows:

(i) The Assistant Administrator shall notify the owner of the affected fishing vessel (via the agent) of the proposed modification and shall provide a summary of the reasons underlying the proposal.

(ii) The owner of the affected vessel may:

(A) Submit written comments on the proposed modification within 30 days after receipt of the notice; and

(B) Receive an informal hearing on the proposed modification if his written request for such a hearing is received by the Assistant Administrator within 15 days after receipt of the notice.

(iii) The Assistant Administrator will publish a notice of the proposed modification in the FEDERAL REGISTER providing for a 30-day public comment period. The Assistant Administrator will also notify the appropriate Regional Fishery Management Councils, the Secretary of State, and the Commandant of the Coast Guard asking for their written comments within 30 days of receipt of such notice.

(iv) Not less than 15 days prior to the date of a hearing, the Assistant Administrator shall:

(A) Publish a notice of the hearing in the FEDERAL REGISTER;

(B) Notify the requesting owner of the time and place of the hearing (via the agent).

(v) The Assistant Administrator may allow public participation at the hearing. The requesting owner and other participants may submit all relevant material, data, views, comments, arguments, and exhibits at the hearings. A summary record shall be kept of any such hearing.

(vi) The Assistant Administrator shall make a final decision regarding the proposed modification as soon as practicable after the 30-day comment period and the hearing, if any. Notice of the modification will be published in the FEDERAL REGISTER and will be sent to the nation involved (via the Secretary of State), the owner of the permitted fishing vessel (via the agent), each appropriate Regional Fishery Management Council, the Secretary of State, the Commandant of the Coast Guard, the Committee on Merchant Marine and Fisheries of the House of Representatives, and the Committees on Commerce, Science, and Transportation, and on Foreign Relations of the Senate.

(vii) If necessary to prevent substantial harm to a fishery resource of the United States, the Assistant Administrator may make the proposed modification effective immediately or otherwise earlier than 30 days after the date of notice of proposed modification. In such cases, the Assistant Administrator shall summarize his findings of necessity and the reasons therefore in the notices of the proposed modification required by this section. The Assistant Administrator shall expedite the hearing process whenever a modification has been implemented on an interim basis.

(3) A nation may submit a written request for a modification of any permit applicable to a vessel of that nation. The Assistant Administrator may make technical modifications or corrections requested by the nation, such as change in radio call sign, which will be effective immediately. Similarly, a change in information submitted on an application, such as change in ownership of a vessel, processing equipment, or tonnage, will be effective immediately.

(4) If, in the opinion of the Assistant Administrator, a permit change requested by a nation could significantly affect the status of any fishery resource, such request will be treated as an application for a new permit and procedures for issuance of the permit will be in accordance with section 204 of the Act.

(5) After modification of a permit under § 611.3(i)(2) or (3) of this section, the Assistant Administrator shall promptly issue a revised permit to the nation involved.

[43 FR 59283, Dec. 19, 1978, as amended at 46 FR 82268, Dec. 15, 1980]

§ 611.4 Vessel reporting.

(a) The operator of each foreign fishing vessel shall notify the Coast Guard, in the manner set forth in paragraph (b) of this section, of:

(1) The time and position at which the vessel will *begin* fishing (action code BEGIN) (see paragraph (d) of this section for use of action codes);

(2) The time and position of a temporary *departure* from the fishing grounds (that is, the specific location where fishing is conducted within a fishing area) for the purpose of embarking or debarking an observer or for a call at a U.S. port, or any other temporary departure from the grounds which will involve departure from any authorized fishing area but which does not include departure from the seaward limits of the fishery conservation zone (action code DEPART);

(3) The time and position of *return* to the fishing grounds following a temporary departure described in paragraph (a)(2), of this section (action code RETURN);

(4) The time and position of any *shift* in its fishing area (as shown in Appendix II to § 611.9), except when changing between areas 2 and 3 in the Northwest Atlantic Ocean fishery (action code SHIFT);

(5) The time and position it will *cease* fishing, intending to leave the fishery conservation zone (action code CEASE).

(b) The notices required by paragraph (a) of this section shall be in English. They should be delivered via private or commercial communications facilities to the appropriate Coast Guard commander who will relay them to the appropriate National Marine Fisheries Service Region (see Table I). If adequate private or commercial communications facilities have not been successfully contacted, only then may the required notice be delivered via the closest Coast Guard communications station as indicated in the accompanying Table II. Radiotelegraphy or TELEX must be used if available. Voice reports will be accepted in English only.

TABLE I

Area	National Marine Fisheries Service	Coast Guard
Pacific Ocean off Hawaii and other insular possessions.	Southwest region, Terminal Island, Calif.	14th District, Honolulu, Hawaii (Telex: 392401).
Pacific Ocean off California, Oregon and Washington.	Northwest region, Seattle, Wash	Pacific Area, San Francisco, California (Telex: 330427).
Pacific Ocean and Bering Sea off Alaska.	Alaska region, Juneau, Alaska	17th District, Juneau, Alaska (Telex: 45305).
Atlantic Ocean north of Cape Hatteras	Northeast region, Gloucester, Mass	Atlantic Area, New York, New York (Telex: 126831).
Atlantic Ocean south of Cape Hatteras, the Gulf of Mexico and the Caribbean Sea.	Southeast region, St. Petersburg, Fla	Do.

TABLE II

Station	Call sign	Radiotelegraphy		Voice: Duplex high-frequency single-sideband channels guarded GMT [2]
		Bands guarded	Times [1]	
Boston	NMF	500 kHz, 8, 12 mHz	H24	B(0000-2400)
Portsmouth	NMN	500 kHz, 8, 12 mHz	H24	A(0200-1200) B(0000-2400) C(0000-2400)
		16 mHz	HJ	D(1200-0200) E (On request)
Miami	NMA	500 kHz	H24	B(0000-2400)
San Juan	NMR	500 kHz, 8, 12 mHz	H24	None
		17 mHz	HJ	
New Orleans	NMG	500 kHz	H24	A(0200-1200) B(0000-2400) C(0000-2400)
				D(1200-0200) E (On request)
San Francisco	NMC	500 kHz, 12 mHz	H24	A(0000-2400) B(0000-2400) C(0000-2400)
		6 mHz	HN	D (On request) E (On request)
		16, 22 mHz	HJ	
Honolulu	NMO	500 kHz, 8, 12 mHz	H24	A(0000-2400) B(0000-2400) C(0000-2400)
		16 mHz	HJ	D (On request) E (On request)
Guam	NRV	500 kHz	H24	B(0900-2100) D(2100-0900)
		8,12 mHz	HN	
		12,16 mHz	HJ	
Kodiak	NOJ	500 kHz, 8 mHz	H24	B(0000-2400) A, C, D and E (On request)

[1] Times guarded as follows:
HJ—Daytime (2 hours after sunrise until 2 hours before sunset, local time).
HN—Nighttime (2 hours before sunset until 2 hours after sunrise, local time).
H24—Continuous, 24 hours.

[2] Carrier frequencies (kHz) as follows:

Letter	Shore transmit	Ship transmit
A	4428.7	4134.3
B	6506.4	6200.0
C	8765.4	8241.5
D	13113.2	2342.4
E	17307.3	16534.4

(c) The notices required by paragraphs (a)(1) and (a)(5) of this section must be *delivered* to the appropriate Coast Guard commander at least 24 hours prior to beginning or ceasing fishing. The other notices required by paragraph (a) of this section must be *transmitted* prior to the event requiring notice and *delivered* within 72 hours of the event.

(d) The notices required by this section shall contain the following information: the message identifier "VESREP" to indicate it is a required vessel report, vessel name, international radio call sign, date (month and day), time (hour and minute G.mt.), latitude and longitude (degrees and minutes), fishing area (use code specified in Appendix II to § 611.9), and the appropriate action code (see paragraphs (a)(1)-(5) of this section). Fishing area and position to be reported shall be the area and position to which the vessel is proceeding for action codes BEGIN, RETURN, and SHIFT, and the area and position being departed for action codes DEPART and CEASE. The date and time reported shall be the date and time of arrival at or departure from the indicated position.

An illustration of a sample report is as follows: The stern trawler NAVIS, LTUX, will begin fishing on March 11, 1979, at 1320 G.m.t. at position 59-30 N. latitude, 142-30 W. longitude in the Yakutat fishing area of the Gulf of Alaska.

The required message would be transmitted as follows:

From: M/V NAVIS, LTUX
To: 17th Coast Guard District, Juneau, Alaska; Alaska Region, NMFS, Juneau, Alaska.
VESREP
NAVIS / LTUX / 0311 / 1320 / 5930N / 14230W / 64 /BEGIN

(e) The notices required by this section may be provided for individual vessels or groups of vessels (on a vessel-by-vessel basis) by fleet commanders or other authorized persons. In these cases, the message format in paragraph (d) of this section should be modified so that each line of the text under "VESREP" is a separate vessel report.

An illustration of a group report is as follows: The refrigerated transport vessel SOPOV, LJUJ, with a fleet commander aboard, wishes to report for three stern trawlers in his fleet. The stern trawler NAVIS, LTUX, will begin fishing as described in the previous example. The stern trawler FISKVOL, LBEV, will temporarily depart the fishing grounds at 58°05′ N. latitude, 149°50′ W. longitude in the Kodiak fishing area on March 12, 1979, at 1200 G.m.t. to embark an observer. The stern trawler ALEXANDROV, LXDV, will cease fishing at 54°40′ N. latitude, 157°15′ W. longitude in the Chirikof fishing area on March 13, 1979, at 0800 G.m.t. to return to its home port. The required message would be transmitted as follows:

From: M/V SOPOV, LJUJ
To: 17th Coast Guard District, Juneau, Alaska; Alaska Region, NMFS, Juneau, Alaska.
VESREP
NAVIS / LTUX / 0311 / 1320 / 5930N / 14230W / 64 / BEGIN //
FISKVOL / LBEV / 0312 / 1200 / 5805N / 14950W / 63 / DEPART //
ALEXANDROV / LXDV / 0313 / 0800 / 5440N / 15715W / 62 / CEASE //

Since the illustrated group report contains notice of the beginning of fishing at 1320 G.m.t. on March 11, the message must be delivered to Commander, 17th Coast Guard District not later than 1320 G.m.t. on March 10.

[43 FR 59293, Dec. 19, 1978; 44 FR 17184, Mar. 21, 1979, as amended at 45 FR 31378, May 13, 1980]

§ 611.5 Vessel and gear identification.

(a) Identification. (1) Each fishing vessel assigned an international radio call sign (IRCS) shall display that call sign amidships on both the port and starboard sides of the deck house or hull, and on an appropriate weather deck.

(2) Each fishing vessel not assigned an IRCS, such as a small trawler associated with a mothership or one of a pair of trawlers, shall display the IRCS of the associated vessel followed by a numerical suffix. (For example, JCZM-1, JCZM-2, etc. would be displayed on small trawlers not assigned an IRCS operating with a mothership whose IRCS is JCZM; JANP-1 would be displayed by a pair trawler not assigned an IRCS operating with a trawler whose IRCS is JANP).

(b) The identifying markings shall be permanently affixed to the vessel in contrasting block Roman alphabet letters and arabic numerals at least one meter in height for vessels over 20 meters in length and at least one-half meter in height for all other vessels.

(c) The operator of each vessel shall:

(1) Keep the identifying markings clearly legible and in good repair, and

(2) Ensure that no part of the vessel, its rigging or its fishing gear obstructs the view of the markings from an enforcement vessel or aircraft.

(d) Each vessel engaged in fishing shall display the lights and shapes prescribed by the International Regulations for Preventing Collisions at Sea, 1972, for the activity in which the vessel is engaged.

(e) Any fishing gear which, when in use, is not physically and continuously attached to a fishing vessel shall be clearly marked with the IRCS of the vessel to which it belongs. Such marking shall be affixed to at least one element of the fishing gear so as to be visible above the water.

§ 611.6 Facilitation of enforcement.

(a) The operator of each fishing vessel shall immediately comply with instructions issued by authorized officers to facilitate boarding and inspection of the vessel for purposes of enforcing the Act and these regulations.

(b) Upon being approached by a Coast Guard cutter or aircraft or other vessel or aircraft authorized to enforce the Act, a vessel shall be alert for signals conveying enforcement instructions. The following signals based on the Interational Code of Signals are among those which may be used:

(1) "L" meaning "You should stop your vessel instantly";

(2) "SQ3" meaning "You should stop or heave to; I am going to board you";

(3) "RY CY" meaning "You should proceed at slow speed, a boat is coming to you"; and

(4) "AA AA AA, etc." which is the call for an unknown station, to which the signaled vessel should respond by identifying itself or by illuminating (or clearing obstructions from) the vessel identification required by § 611.5.

(c) A vessel signaled for boarding shall:

(1) Guard channel 16, VHF-FM, if equipped with VHF-FM radio;

(2) Stop immediately and lay to or maneuver in such a manner as to facilitate boarding by the authorized officer and his party;

(3) Provide a safe ladder for the authorized officer and his party (Safety of Life at Sea (SOLAS) Convention of 1960 pilot ladder preferred);

(4) When necessary to facilitate the boarding, provide a manrope, safety line and illumination for the ladder; and

(5) Take such other actions as necessary to ensure the safety of the authorized officer and his party and to facilitate the boarding and inspection.

(d) A Coast Guard cutter whose personnel wish to board a fishing vessel for purposes other than law enforcement will display the international code signal "SQ3 RQ" which means "Will you stop or heave to? May I board you?"

(e) If equipped with suitable radio equipment, each fishing vessel shall guard 500 kHz and 2182 kHz each day from 2000 to 2030 G.m.t.

(f) Fishing vessels, through a fleet commander or otherwise, shall provide vessel positions when requested by the National Marine Fisheries Service or the Coast Guard within the time specified in the request.

§ 611.7 Prohibitions.

(a) It is unlawful for any person to:

(1) Violate any provision of the Act or any regulation or permit issued under the Act;

(2) Use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued under the Act;

(3) Violate any provision of, or regulation under, an applicable Governing International Fishery Agreement entered into under section 201(c) of the Act;

(4) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Act or any regulation, permit, or agreement referred to in paragraph (a)(1) or (a)(3) of this section;

(5) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search or inspection described in paragrpah (a)(4) of this section;

(6) Resist a lawful arrest for any act prohibited by this section;

(7) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in paragraph (a)(1) or (a)(3) of this section; or

(8) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section.

(b) It is unlawful for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage in fishing:

(1) Within the boundaries of any State; or

(2) Within the fishery conservation zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to § 611.3.

(c) A person is guilty of a criminal offense if he commits any act prohibited by paragraphs (a)(4), (a)(5), (a)(6), (a)(8) or (b) of this section.

§ 611.8 Observers.

(a) For the purposes of collecting scientific data and carrying out such other management and enforcement activities as may be authorized, the Assistant Administrator may assign an observer to any foreign fishing vessel. The owner and operator of any vessel to which such an observer is assigned shall:

(1) Provide, at no cost to the observer or the United States, accommodations for the observer aboard the vessel which are equivalent to those provided to the officers of that vessel;

(2) Cause the vessel to proceed to such places and at such times as may be designated by the Assistant Administrator for the purpose of embarking and debarking the observer;

(3) Allow the observer to use the vessel's communications equipment and personnel as necessary for the transmission and receipt of messages;

(4) Allow the observer access to and use of the vessels's navigation equipment and personnel as necessary to determine the vessel's position; and

(5) Provide all other reasonable assistance to enable the observer to carry out his duties.

(b) The owner and operator of each fishing vessel to which an observer is assigned shall reimburse the United States for the total costs of placing the observer aboard, including salary, per diem, transportation of observer, and overhead costs. Payment of these costs shall be made upon billing at the end of the calendar year.

(c) It is unlawful for any person to forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer placed aboard a vessel under this section.

(d) The procedures of § 611.6(c) must be followed when boarding or disembarking observers.

[43 FR 59293, Dec. 19, 1978, as amended at 45 FR 15182, Mar. 10, 1980]

§ 611.9 Reports and recordkeeping.

(a) The operator of each foreign fishing vessel shall maintain an accurate log of catch and effort information in accordance with the regulations for the fishery in which the vessel is engaged.

(b) Upon each transfer of any fish or fishery product, the operators of both the transferring and receiving vessels shall record in their respective logs:

(1) The date, time, and location (in geographic coordinates) of the transfer;

(2) The weight or number, by species, of all fish transferred; and

(3) The name, nationality, and permit number of the other vessel involved in the transfer.

(c) The operator of each foreign fishing vessel shall record, in a communications log, the Greenwich mean time and content of each notification made under § 611.4.

(d) *Daily cumulative catch log.* (1) All foreign fishing vessels, except as otherwise provided in § 611.90(e)(2), shall maintain a daily cumulative catch log in English. This log shall have recorded on a daily and a cumulative basis the round weight of all catches of all allocated species during the permit period. The log shall be maintained aboard the vessel during the duration of the permit period. Information for each fishing area shall be maintained on a separate page of the log.

(2) The log shall contain the following information:

(i) Name and call sign of the vessel.

(ii) Permit number.

(iii) Date.

(iv) Allocated species by common name and species code number (see Appendix I).

(v) Fishing area and area code number where caught (see Appendix II).

(vi) Daily catch by allocated species to the nearest tenth of a metric ton (0.1 m.t.).

(vii) Disposition of the catch: human consumption (including consumed on board), fishmeal, or discarded.

(viii) Cumulative total catch for each allocated species in each fishing area.

(3) This daily cumulative catch log must be in the format illustrated in Appendix III, which contains the instructions for completing the log. No adjustment shall be made in this log to deduct any catch off-loaded. The log must record this information for each of the species for which the vessel's flag nation has an allocation (see § 611.21).

(4) In the Washington, Oregon, and California trawl fishery, the Gulf of Alaska groundfish fishery, and the Bering Sea and Aleutian Islands fishery, record in addition to allocated species, the prohibited species salmon (species code 210) and halibut (species code 722) which are discarded, in terms of the number of fish.

(e) *Weekly catch report.* (1) Each foreign nation shall submit, through the designated representative, a weekly report stating, on a vessel-by-vessel basis, except as otherwise provided in § 611.90(e)(2), the catch in round weight of the species allocated to that nation, for the weekly period Sunday through Saturday, Greenwich mean time. In the Washington, Oregon, and California trawl fishery, the Gulf of Alaska groundfish fishery, and the Bering Sea and Aleutian Islands fishery, in addition to allocated species, catch of salmon and halibut in number of fish shall be reported.

(2) This report shall contain the following information:

(i) Name of vessel.

(ii) Permit number.

(iii) Month and day (last day of reporting period).

(iv) Fishing areas by code numbers.

(v) Number of days actually fished in each fishing area during the reporting period.

(vi) Allocated species caught during the reporting period by species code number (regardless of whether retained or discarded).

(vii) Weight of catch of allocated species by fishing area and species rounded to the nearest tenth of a metric ton (0.1 m.t.).

(3) This weekly report must be in the format illustrated in Appendix IV, which contains instructions for completing the report form, a sample of the form, and a sample of a Telex report.

(4) This report must arrive at the address and time specified in Appendix IV D. The report may be sent by Telex but mail or hand delivery is permitted if it will arrive by the prescribed time. If the report is sent by Telex, a completed copy of the report form must be submitted by mail as a confirmation of the Telex report.

(f) *Weekly report of receipts of U.S. harvested fish.* (1) Each foreign nation shall submit, through the designated representative, a weekly report stating, on a vessel-by-vessel basis, any receipt of U.S. harvested fish for the weekly period Sunday through Saturday, Greenwich mean time. No report is required for vessels which receive no U.S. harvested fish during the reporting period.

(2) This report shall contain the following information:

(i) Name of vessel.

(ii) Permit number.

(iii) Month and day (last day of reporting period).

(iv) Fishing areas by code numbers.

(v) Species received during the week by species code number (regardless of whether retained or discarded).

(vi) Weight of fish received by fishing area and species rounded to the nearest tenth of a metric ton (0.1 m.t.).

(3) This weekly report must be in the format illustrated in Appendix V, which contains instructions for completing the report form, a sample of the form, and a sample of a Telex report.

(4) This report must arrive at the address and time as specified in the submission instructions for the Weekly Catch Report in Appendix IV D. The report may be sent by Telex but mail or hand delivery is permitted if it will arrive by the prescribed time. If the report is sent by Telex, a completed copy of the report form must be submitted by mail as a confirmation of the Telex report.

(g) *Weekly report of marine mammal incidental catch.* (1) Each foreign nation shall submit, through the designated representative, a weekly report stating, on a vessel-by-vessel basis, except as otherwise provided in § 611.90(e)(2), any incidental catch of marine mammals for the weekly period Sunday through Saturday, Greenwich mean time. No report is required for vessels which have no incidental catch of marine mammals during the reporting period.

(2) This report shall contain the following information:

(i) Name of vessel.

(ii) Permit number.

(iii) For each marine mammal caught:

(A) Date.

(B) Latitude and longitude.

(C) Species, by species code number.

(D) Status of mammal by status code number.

(3) This weekly report must be in the format illustrated in Appendix VI, which contains instructions for completing the report form, a sample of the form, and a sample of a Telex report.

(4) This report must arrive at the address and time as specified in the submission instructions for the Weekly Catch Report in Appendix IV D. The report may be sent by Telex but mail or hand delivery is permitted if it will arrive by the prescribed time. If the report is sent by Telex, a completed copy of the report form must be submitted by mail as a confirmation of the Telex report.

(5) For information regarding the kill, capture, or harassment of marine mammals and the requirements for permits to take marine mammals incidental to fishing operations, see § 611.3(h) and 50 CFR 216.24.

(h) In addition, the owner or operator of each fishing vessel shall provide to the Assistant Administrator, in such form and at such times as the Assistant Administrator may prescribe, such other information as the Assistant Administrator may request to carry out duties under the Act.

(i) The records and logbooks required to be kept by this section shall be:

(1) Accurately and timely maintained in a form satisfactory to the Assistant Administrator; and

(2) Made available for inspection by any authorized officer at any time.

APPENDIX I—SPECIES CODES

A. ATLANTIC OCEAN FISHES (INCLUDING THE GULF OF MEXICO)

Code and common English name		Scientific name
	FINFISHES	
101	Cod, Atlantic	*Gadus Morhua.*
102	Haddock	*Melanogrammus aeglefinus.*
103	Redfish	*Sebastes marinus.*
104	Hake, silver	*Merluccius bilinearis.*
105	Hake, red	*Urophycis chuss.*
106	Pollock	*Pollachius virens.*
202	Herring, Atlantic	*Clupea harengus harengus.*
204	Mackerel, Atlantic	*Scomber scombrus.*
210	Salmon, coho	*Oncorhynchus kisutch.*
212	Butterfish	*Peprilus triacanthus.*
216	Menhaden, Atlantic	*Brevoortia tyrannus.*
220	Saury, Atlantic	*Scomberesox saurus.*
228	Bluefish	*Pomatomus saltatrix.*
264	Swordfish	*Xiphias gladius.*
112	Plaice, American	*Hippoglossoides platessoides.*
114	Flounder, witch	*Glyptocephalus cynoglossus.*
116	Flounder, yellowtail	*Limanda ferruginea.*
120	Halibut, Atlantic	*Hippoglossus hippoglossus.*
122	Flounder, winter	*Pseudopleuronectes americanus.*
124	Flounder, summer	*Paralichthys dentatus.*
132	Goosefish	*Lophius americanus.*
136	Searobins (NS)	*Triglidae.*
144	Cusk	*Brosme Brosme.*

A. Atlantic Ocean Fishes (including the Gulf of Mexico)—Continued

Code and common English name		Scientific name
164	Pout, ocean	*Macrozoarces americanus.*
168	Grenadier, roundnose	*Macrourus rupestris.*
172	Lances, sand (NS)	*Ammodytidae.*
176	Scup	*Stenotomus chrysops.*
182	Tilefish	*Lopholatilus chamaeleonticeps.*
186	Hake, white	*Urophycis tenuis.*
188	Wolffishes (NS)	*Anarhichadidae.*
894	Sculpin (NS)	*Cottidae.*
302	Alewife	*Alosa pseudoharengus.*
309	Herring, river (302/334/360)	
310	Shad, American	*Alosa sapidissima.*
312	Argentine, Atlantic	*Argentina silus.*
318	Salmon, Atlantic	*Salmo salar.*
332	Bass, Black Sea	*Centropristis spp.*
334	Herring, blueback	*Alosa aestivalis.*
340	Capelin	*Mallotus villosus.*
354	Shad, gizzard	*Dorosoma cepedianum.*
360	Shad, hickory	*Alosa mediocris.*
406	Scad, rough (jack mackerel)	*Trachurus lathami.*
459	Dogfishes (NS)	*Squalidae.*
469	Sharks (NS)	*Squaliformes.*
479	Skates (NS)	*Rajiformes.*
499	Other finfish	Osteichtyhes—Condrichthyes.
137	Red snapper	*Lutjanus campechanus.*
155	Snappers (NS)	*Lutjanidae.*
847	Porgies (NS)	*Sparidae.*
444	Jewfish	*Epinephelus itajara.*
445	Red grouper	*Epinephelus morio.*
447	Warsaw grouper	*Epinephelus nigritus.*
450	Black grouper	*Mycteroperca bonaci.*
456	Groupers (NS)	*Serranidae.*
461	Tilefish (NS)	*Branchiostegidae.*
848	Reef fishes (NS).	
206	Great barracuda	*Sphyraena barracuda.*
238	Dolphin	*Coryphaena hippurus.*
237	Pompano dolphin	*Coryphaena equisetis.*
255	Wahoo	*Acanthocybium solanderi.*
372	Stingrays (NS)	*Dasyatidae.*
373	Eagle rays (NS)	*Myliobatidae.*
462	Porbeagle shark	*Lamna nasus.*
463	Longfin Mako shark	*Isurus paucus.*
464	Shortfin mako shark	*Isurus oxyrinchus.*
465	Blue shark	*Prionace glauca.*
256	White marlin	*Tetrapturus albidus.*
254	Longbill spearfish	*Tetrapturus pfluegeri.*
260	Blue marlin	*Makaira nigricans.*
252	Sailfish	*Istiophorus platypterus.*
240	King mackerel	*Scomberomorus cavella.*
244	Spanish mackerel	*Scomberomorus maculatus.*
314	Atlantic croaker	*Micropogon undulatus.*
414	Spot	*Leiostomus xanthurus.*
408	Bass, striped	*Morone saxatilis.*
418	Weakfish	*Cynoscion regalis.*
INVERTEBRATES		
502	Squid, long-finned	*Loligo pealei.*
504	Squid, shortfinned	*Illex illecebrosus.*
509	Squid (NS)	*Cephalopoda.*
536	Scallop, Sea	*Placopecten Magellanicus.*
619	Crabs, marine (NS).	
622	Lobster, northern	*Homarus americanus.*
697	Shrimps (NS)	
630	Shrimp, royal red *robustus*	*Hymenopenaeus.*

B. PACIFIC OCEAN FISHES

Code and common English name		Scientific name
	FINFISHES	
701	Pollock (walleye, Alaska)	*Theragra chalcogramma.*
702	Pacific cod	*Gadus macrocephalus.*
703	Sablefish (black cod)	*Anoplopoma fimbria.*
704	Pacific whiting	*Merluccius productus.*
118	Turbot (Greenland halibut)	*Reinhardtius hippoglossoides.*
721	Turbot (arrow-tooth flounder)	*Atheresthes stomias.*
720	Yellowfin sole	*Limanda aspera.*
129	Other flounders (NS)	Pleuronectiformes.
780	Pacific Ocean perch	*Sebastes alutus.*
849	Other rockfish (NS)	Scorpaenidae.
885	Lingcod	*Ophiodon elongatus.*
207	Atka mackerel	*Pleurogrammus monopterygius.*
208	Jack mackerel	*Trachurus symmetricus.*
209	Pacific herring	*Clupea harengus pallasi.*
722	Pacific halibut	*Hippoglossus stenolepis.*
211	Steelhead trout	*Salmo gairdneri.*
210	Pacific salmon (all species)	*Oncorhynchus spp.*
499	Other finfish (NS)	Osteichthyes—Chondrichthyes.
200	Armorhead	*Pentaceros Richardsoni.*
201	Alfonsin	*Beryx splendens.*
237	Pompano dolphin	*Coryphaena equisetis.*
238	Dolphin	*Coryphaena hippurus.*
252	Sailfish	*Istiophorus platypterus.*
253	Black marlin	*Makaira indicia.*
255	Wahoo	*Acanthocybium solanderi.*
260	Blue marlin	*Makaira nigricans.*
261	Striped marlin	*Tetrapturus audax.*
262	Shortbill spearfish	*Tetrapturus angustirostris.*
263	Requiem sharks (NS)	*Carcharhinidae.*
264	Broadbill swordfish	*Xiphias gladius.*
265	Thresher sharks (NS)	*Alopiidae.*
266	Mackerel sharks (NS)	*Lamnidae.*
267	Hammerhead sharks (NS)	*Sphyrnidae.*
315	Rattails (grenadiers)	*Coryphaenoides spp.*
469	Other sharks (NS)	*Squaliformes.*
749	Idiot Rockfish	*Sebastolobus spp.*
500	Nonspecified species, see § 611.92(b)(4)	
850	Shortbelly rockfish	*Sebastes jordani.*
	INVERTEBRATES	
610	Tanner crab (opilio, snow, queen)	*Chionoecetes opilio.*
501	Tanner crab (bairdi, snow, queen)	*Chionoecetes bairdi.*
684	Tanner crab (hybrid)	
676	Other crabs	Chionoecetes species.
509	Squid (NS)	*Cephalopoda.*
697	Shrimp (NS)	
696	Octopus (NS)	*Octopoda.*
698	Spiny lobsters (NS)	*Palinuridae.*
682	Corals (NS)	
539	Scallops (NS)	*Pectinidae.*
673	Snails (NS)	*Gastropoda.*

C. MARINE MAMMALS

Code and common English name		Scientific name
993	Baleen whale (NS)	*Mysticeti.*
994	Toothed whales (NS)	*Odontoceti.*
915	Beluga	*Delphinapterus leucas.*
946	Northern right whale dolphin	*Lissodelphis borealis.*
992	Pilot whales (NS)	*Globicephala sp.*
998	Porpoise (NS)	*Cetacea delphinidae.*
936	Atlantic white-sided dolphin	*Lagenorhynchus acutus.*
941	Bottlenose dolphin	*Tursiops truncatus.*
940	Common dolphin	*Delphinus delphis.*

8C. MARINE MAMMALS—Continued

Code and common English name		Scientific name
947	Harbor porpoise	*Phocoena phocoena.*
938	Pacific white-sided dolphin	*Lagenorhynchus obliquidens.*
942	Risso's dolphin, grampus	*Grampus griseus.*
934	Rough-toothed dolphin	*Steno bredanensis.*
995	Seals (NS)	*Pinnipedia phocidae.*
974	Bearded seal	*Erignathus barbatus.*
976	Gray seal	*Halichoerus grypus.*
967	Harbor seal	*Phoca vitulina.*
972	Harp seal, Greenland seal	*Phoca groenlandica.*
975	Hooded seal	*Cystophora cristata.*
968	Largha seal, spotted seal	*Phoca largha.*
981	Northern elephant seal	*Mirounga angustirostris.*
958	Northern fur seal	*Callorhinus ursinus.*
973	Ribbon seal	*Phoca fasciata.*
969	Ringed seal	*Phoca hispida.*
996	Sea lions (NS)	*Pinnipedia otariidae.*
956	California sea lion	*Zalophus californianus.*
955	Northern sea lion	*Eumetopias jubatus.*
966	Walrus	*Odobenus rosmarus.*
987	Polar bear	*Ursus maritimus.*
986	Sea otter	*Enhydra lutris.*

APPENDIX II.—AREA CODES

Code number	Name	Figure No.
	A. NORTHWEST ATLANTIC OCEAN FISHERY	
01	Atlantic Area 1	1
02	Atlantic Area 2	1
03	Atlantic Area 3	1
04	Atlantic Area 4	1
05	Atlantic Area 5	1
	B. PACIFIC	
51	Bering Sea Area I	2
52	Bering Sea Area II	2
53	Bering Sea Area III	2
54	Bering Sea Area IV	2
61	Shumagin	3
62	Chirikof	3
63	Kodiak	3
64	Yakutat	3
65	Southeastern	3
66	Charlotte	3
67	Vancouver	3
71	Columbia	3
72	Eureka	3
73	Monterey	3
74	Conception	3
81	Hawaii and Midway Islands	
82	Guam and Northern Mariana Islands	
83	American Samoa	
84	Johnston Atoll	
85	Howland and Baker Islands	
86	Kingman Reef and Palmyra Atoll	
87	Jarvis Island	
88	Wake Island	
	C. GULF OF MEXICO, AND ATLANTIC FISHERIES FOR BILLFISH AND SHARKS	
11	Caribbean Area 11	4
12	Gulf of Mexico Area 12	4
13	Gulf of Mexico Area 13	4
14	Gulf of Mexico Area 14	4
15	Atlantic Area 15	4
16	Atlantic Area 16	4
17	Atlantic Area 17	4

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43a

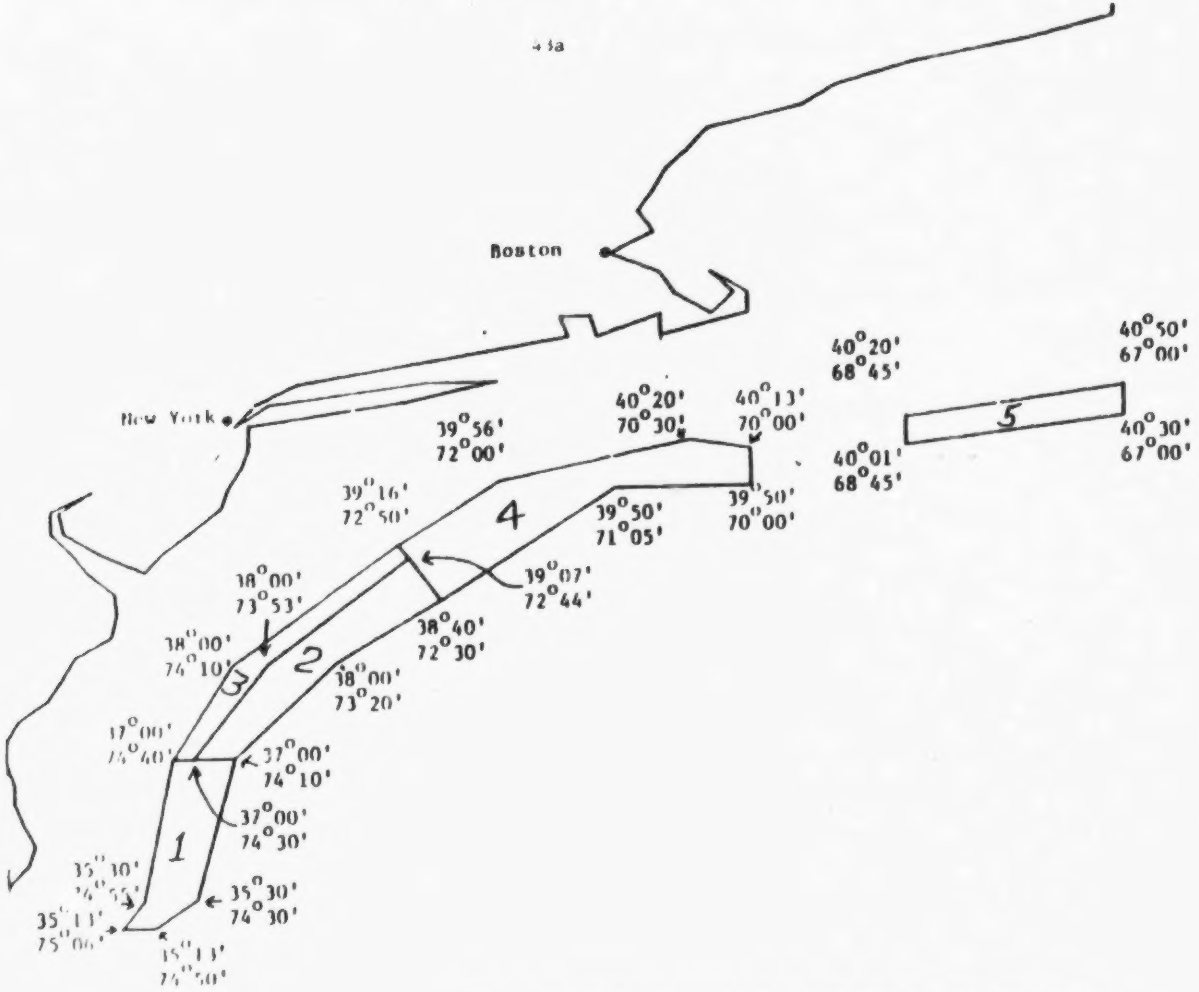
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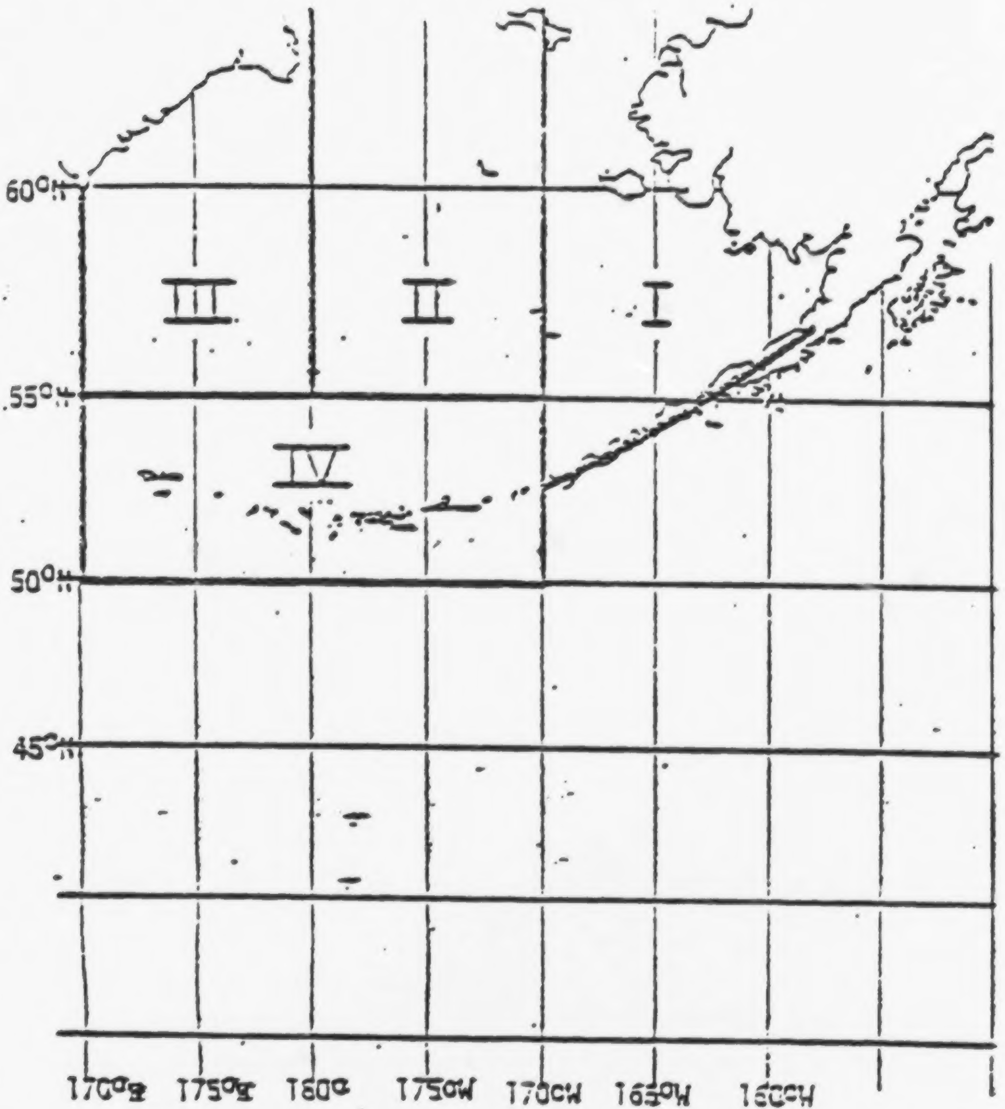
Figure 1. Fishing Areas of the Northwest Atlantic Ocean


60°N
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III
II
I
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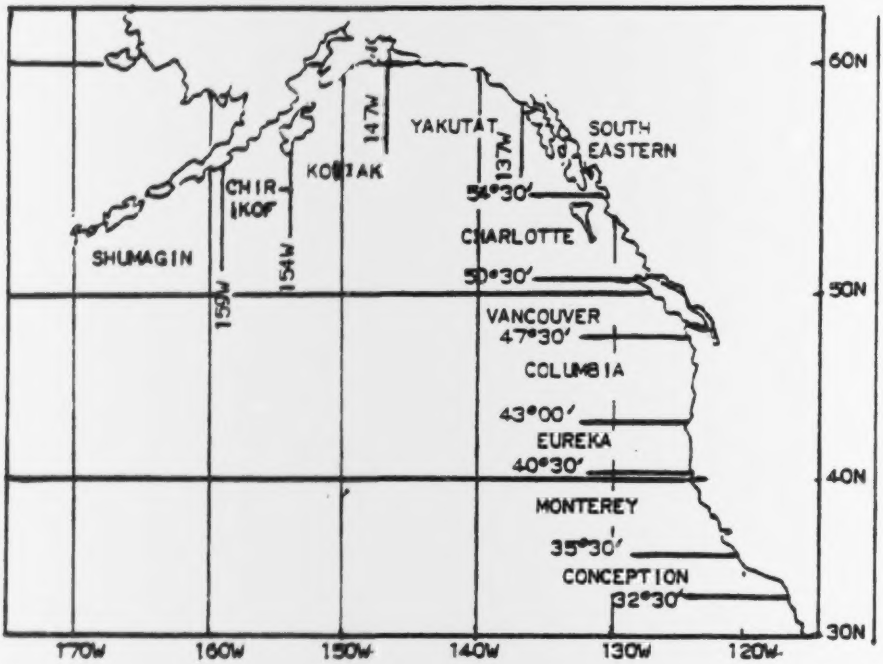
160°W

Figure 2. Fishing areas of the Bering Sea and Aleutian Islands.

43c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SHUMAGIN
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KODIAK
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SOUTH EASTERN
CHARLOTTE
VANCOUVER
COLUMBIA
EUREKA
MONTEREY
CONCEPTION
159W
154W
147W
137W
54°30'
50°30'
47°30'
43°00'
40°30'
35°30'
32°30'

Figure 3. Fishing Areas of the Gulf of Alaska and Northeast Pacific.

43d

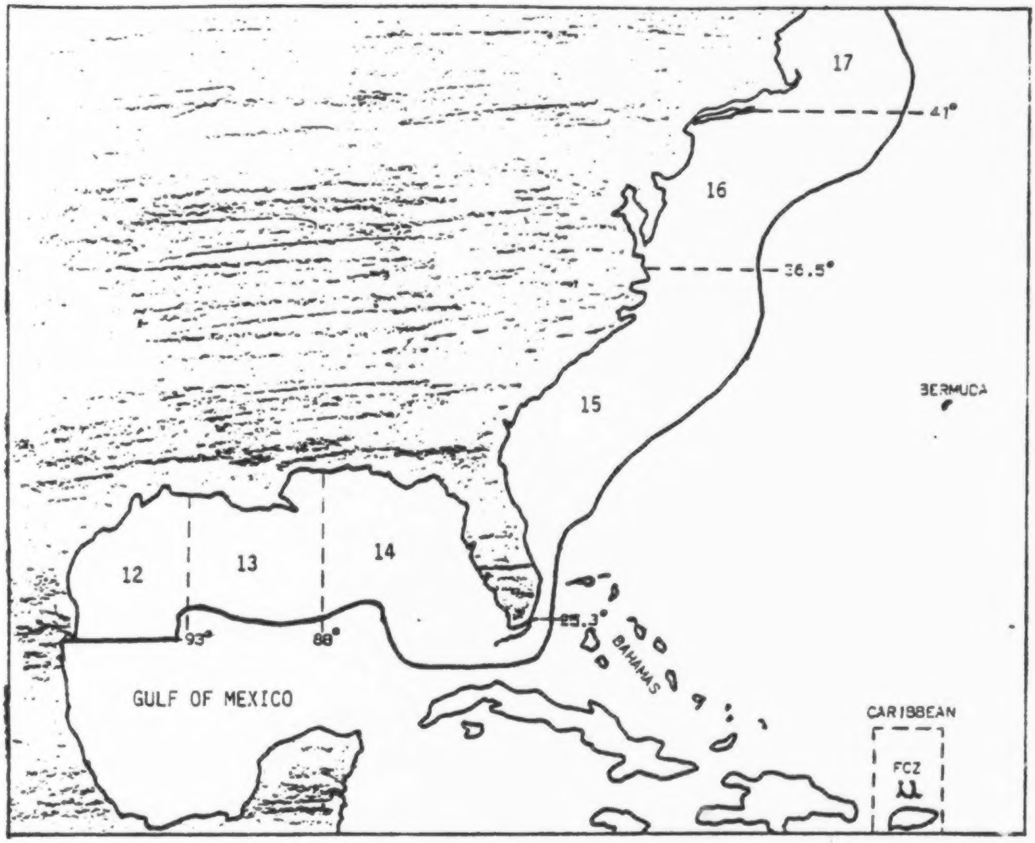
17
41°
16
36.5°
BERMUDA
15
12
13
14
25.3°
93°
88°
BAHAMAS
GULF OF MEXICO
CARIBBEAN
FCZ

FIGURE 4—GULF OF MEXICO, AND ATLANTIC FISHERIES FOR BILLFISH AND SHARKS

Appendix III—Daily Cumulative Catch Log

A. *Form Entries.* 1. Vessel name and call sign: Enter name and international radio call sign (IRCS) as shown on the permit.

2. Permit no.: Enter assigned permit number for the current year.

3. Fishing area and code number: Enter area and code number, from Appendix II, in which the fish were caught. The catch from each area shall be maintained on a separate form.

4. Date: Enter the day based on Greenwich mean time, on which the catch was taken.

5. Species: Enter the common name and species code for each species caught for which there is an applicable national allocation. Use appropriate species codes from Appendix I.

6. Catch: Enter each day's catch by species, to the nearest tenth of a metric ton (0.1 m.t.), round weight, by fishing area.

7. Disposition: For each species, specify the disposition as follows: Enter "C" for fish consumed on board and for fish which are frozen or otherwise processed other than for fishmeal; enter "M" for fish which are processed for fishmeal; and enter "D" for fish which are discarded. For individual fish which are in part used for fishmeal with the remainder otherwise processed, enter "C".

8. Cumulative: Enter the cumulative catch, by species, to the nearest tenth of a metric ton (0.1 m.t.), round weight, by fishing area.

B. *Log maintenance.* The cumulative catch log is to be updated within 12 hours following the end of the day on which the catch was taken. Entries as to weights shall be based on the most accurate method available to the vessel including, but not limited to, scale round weights, factory weights converted to round weights, or estimated deck weights.

C. *Sample log entries.* 1. The stern trawler NAVIS, LTUX, permit number LT-79-0001-A, commenced fishing under its 1979 permit on March 13, 1979. On that date in the Yakutat area (code 64) of the Gulf of Alaska the vessel's catch of allocated species was 80.32 tons of pollock (code 701), 12.24 tons of Pacific ocean perch (code 780), and 6.20 tons of Atka mackerel (code 207). The pollock and Pacific ocean perch were frozen and the Atka mackerel were processed for fishmeal. On March 14, the vessel's catch of allocated species was 41.32 tons of pollock, 5.57 tons of Pacific ocean perch, and 1.80 tons of Atka mackerel in the Yakutat area before shifting to the Kodiak area where 23.44 tons of pollock, 23.68 tons of Pacific ocean perch, 86.36 tons of Atka mackerel, and .36 tons of sablefish were caught. The pollock and Pacific ocean perch were frozen and the Atka mackerel were discarded.

2. A separate log sheet would be required to record the catch in each fishing area. The log form for the Yakutat area would appear as follows:

Daily Cumulative Catch Log

Vessel name and call sign: NAVIS, LTUX.
Permit No. LT-79-0001-A.
Fishing area and code number: YAKUTAT, 64.

SPECIES: POLLOCK—701

Date: March 13, 1979—
Catch: 80.3 tons.
Disposition: C.
Cumulative: 80.3 tons.

Date: March 14, 1979—
Catch: 41.3 tons.
Disposition: C.
Cumulative: 121.6 tons.

SPECIES: PACIFIC OCEAN PERCH—780

Date: March 13, 1979—
Catch: 12.2 tons.
Disposition: C.
Cumulative: 12.2 tons.

Date: March 14, 1979—
Catch: 5.6 tons.
Disposition: C.
Cumulative: 17.8 tons.

SPECIES: ATKA MACKEREL—207

Date: March 13, 1979—
Catch: 6.2 tons.
Disposition: M.
Cumulative: 6.2 tons.

Date: March 14, 1979—
Catch: 1.8 tons.
Disposition: D.
Cumulative: 8.0 tons.

Appendix IV—Weekly Catch Report

A. *Report form entries.*

1. Page numbering: Sequentially number each page and the total number of pages in each submission. For example, the pages of a submission encompassing the catches of three vessels would be numbered "Page 1 of 3", "Page 2 of 3", and "Page 3 of 3".

2. Vessel name: Enter the vessel name as shown on the permit, flush left, up to 20 characters, in the space provided.

3. Permit number: Enter the current permit number without hyphens.

4. Month/Day: Enter the month and day on which the weekly reporting period ended. A reporting period begins on Sunday at 0001 hours, G.m.t. (except during the first week of each year when it begins on

January 1) and ends on Saturday at 2400 hours, G.m.t. (except during the last week of each year when it ends on December 31).

For example, for the report period ending on Saturday, April 7, 1979, enter: 0407.

5. Area code: Enter the code from Appendix II for each area in which the vessel fished during the reporting period.

6. Days fished: Enter the number of days during which fishing gear was placed in the water in each fishing area during the reporting period.

7. Species: Enter the code from Appendix I for each allocated species caught during the reporting period. In addition, in the Washington, Oregon, and California trawl fishery, the Gulf or Alaska goundfish fishery, and the Bering Sea and Aleutian Islands fishery enter the species code 210 for salmon and the species code 722 for halibut.

8. Catch: Enter the round weight, to the nearest tenth of a metric ton (0.1 m.t.), by species and area, of allocated species caught during the reporting period, regardless of whether retained or discarded. In addition, in the Washington, Oregon, and California trawl fishery, the Gulf of Alaska groundfish fishery, and the Bering Sea and Aleutian Islands fishery, for salmon and halibut enter number of fish discarded.

9. Designated representative: Enter the name of the designated representative who is responsible for submitting reports for the foreign nation.

10. Date: Enter the date the report is submitted to the National Marine Fisheries Service by the designated representative.

B. *Telex reports.*

1. To ensure receipt of the Weekly Catch Report in a timely manner, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be submitted by mail as a confirmation. Designated representatives may include a number of vessel reports in one Telex message providing the information is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex shall contain the message identifier "CATREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Catch Report. Data shall be submitted as follows:

Vessel name/Permit number/Date//
Area/Days fished//
Species/Catch//Species/Catch//etc.//
Area/Days fished//
Species/Catch//Species/Catch//ect.//etc.

C. *Example of a Weekly Catch Report.*

1. The stern trawler NAVIS, permit number LT-79-0001-A, entered the fishery conservation zone on Sunday, March 11, 1979, began fishing in the Yakutat area (code 64) of the Gulf of Alaska on March 13, and continued fishing in that area the morning of March 14. The afternoon of March 14, the vessel shifted to the Kodiak area (code 63), commenced fishing that evening, and continued fishing through Saturday, March, 17, 1979. (Note that March 14 counts as a day fished in *both* area 64 and area 63). In the Yakutat area the vessel caught 121.6 tons of pollock (code 701), 17.8 tons of Pacific ocean perch (code 780), and 8.0 tons of Atka mackerel (code 207). In the Kodiak area the vessel caught 23.4 tons of pollock, 23.7 tons of Pacific ocean perch, 86.4 tons of Atka mackerel, and .4 tons of sablefish (code 703).

2. The text of the Telex report would appear as follows:

CATREP
NAVIS/LT790001A/0317//
64/2//
701/121.6//780/17.8//207/8.0//
63/4//
701/23.4//780/23.7//207/86.4//703/.4//

3. The completed form would appear as follows:

49a

WEEKLY CATCH REPORT

PAGE 1 OF 1

VESSEL NAME
NAVIS

PERMIT NUMBER
LT79000l A

MONTH DAY
03 17

AREA CODE	DAYS FISHED	SPECIES CODES									
		701	780	207	703						
64	2	121.6	17.8	8.0							
63	4	23.4	23.7	86.4	.4						

DESIGNATED REPRESENTATIVE: Smith Shipping Co. DATE: 3/20/79

D. *Submission instructions.*

1. Weekly reports must be received from designated representatives in the prescribed format by the appropriate Regional/Center Director of the National Marine Fisheries Service by the times indicated below:

Fishery	Address	Report Received by
Northwest Atlantic Ocean	Director, Northeast Region, National Marine Fisheries Service 14 Elm Street Gloucester, Massachusetts 01930 Telex No.: 940007.	Wednesday, 1900 G.m.t., following reporting period.
Washington, Oregon California Trawl	Director, Northwest Region National Marine Fisheries Service 1700 Westlake Avenue, North Seattle, Washington 98109 Telex No.: 9104442786.	Wednesday, 1900 G.m.t., following reporting period.
Seamount Groundfish	Director, Southwest Region National Marine Fisheries Service 300 South Ferry Street Terminal Island, California 90731.	Wednesday, 1900 G.m.t., following reporting period.
Atlantic Billfish and Sharks	Director, Southeast Fisheries Center National Marine Fisheries Service 75 Virginia Beach Drive Miami, Florida 33149.	Wednesday, 1900 G.m.t., following reporting period.
Bering Sea and Aleutian Islands Gulf of Alaska Groundfish Snails (Bering Sea) Crab (Bering Sea).	Director, Alaska Region National Marine Fisheries Service P.O. Box 1668 Juneau, Alaska 99801 Telex No.: 09945-377.	Second Monday, 1900 G.m.t., following reporting period.
Royal Red Shrimp	Director, Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Dr., Miami, Florida, 33149.	Wednesday, 1900 G.m.t. following reporting period.

Table I. Fishing gear and season restrictions by fishing area.
Northwest Atlantic Ocean Fishery

Off-Bottom Gear Only

Area[1/]	January	February	March	April	May	June	July	August	September	October	November	December
1										▨	▨	▨
2	▨	▨	▨			▨	▨	▨	▨ 2/	▨	▨	▨
3	▨	▨	▨							▨	▨	▨
4								▨	▨	▨	▨	▨
5								▨	▨	▨	▨	▨

Bottom Gear and Off Bottom Gear

Area[1/]	January	February	March	April	May	June	July	August	September	October	November	December
1												
2												
3												
4	▨	▨	▨									
5	▨	▨	▨									

Unless otherwise noted, seasons open at 0001 hours local time on the first day of the month and terminate at 2400 hours local time on the last day of the month.

1/ Coordinates of the various areas are set forth in Figure 1 to Appendix II of §611.9.

2/ Season begins at 0001 hours local time on June 15, and terminates at 2400 hours local time on September 15.

▨ Denotes maximum open fishing season, subject to possible earlier closure for some or all nations in accordance with §611.15

2. By agreement with the appropriate Regional/Center Director, weekly reports may be submitted to some other appropriate representative of the National Marine Fisheries Service.

APPENDIX V—WEEKLY REPORT OF RECEIPT OF U.S. HARVESTED FISH

A. *Report form entries.*

1. Page numbering, vessel name, permit number, month/day, area code, designated representative, and date shall be entered in accordance with the instructions for the Weekly Catch Report contained in Appendix IV A 1-5, 9 and 10.

2. Species: Enter the code from Appendix I for each species received during the reporting period, including those which are subsequently discarded.

3. Amounts received: Enter the round weight, to the nearest tenth of a metric ton (0.1 m.t.), by species and area, of species received from vessels of the U.S. during the reporting period, regardless of whether retained or discarded.

B. *Telex reports.*

1. To ensure receipt of the Weekly Report of Receipts of U.S. Harvested Fish in a timely manner, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be submitted by mail as a confirmation. Designated representatives may include a number of vessel reports in one Telex message providing the information is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex shall contain the message identifier "RECREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Report of Receipt of U.S. Harvested Fish. Data shall be submitted as follows:

Vessel name/Permit number/Date//
Area//
Species/Amount received//Species/Amount received//etc.//
Area//
Species/Amount received//Species/Amount received//etc.//etc.

C. *Example of a Weekly Report of Receipt of U.S. Harvested Fish.*

1. The stern trawler NAVIS, operating under permit number LT-79-0001-A which authorizes the receipt of U.S. harvested Pacific hake and other associated species in the Washington, Oregon, California trawl fishery, received from U.S. vessels in the Columbia area (Code 71) during the week of June 3-9, 1979, the following species and amounts: Pacific hake (code 704), 156.3 tons; rockfishes (code 849), .2 tons; jack mackerel (code 208), 27.0 tons; and other species (code 499), .1 tons.

2. The text of the Telex report would appear as follows:

RECREP
NAVIS/LT790001A/0609//
71//
704/156.3//849/.2//208/27.0//499/.1//

3. The completed form would appear as follows:

BLANK PAGE

466

VESSEL NAME

WEEKLY REPORT OF
RECEIPT OF U.S. HARVESTED FISH

NAVIS

PAGE 1 OF 1

PERMIT NUMBER

LT790001A

MONTH DAY

06 09

SPECIES RECEIVED (METRIC TONS) BY AREA

AREA CODE	SPECIES CODES										
	704	849	208	499							
71	156.3	.2	27.0	.1							

DESIGNATED REPRESENTATIVE: Smith Shipping Co DATE: 6/12/79

D. *Submission instructions.* The submission instructions for the Weekly Catch Report, as contained in Appendix IV D, are applicable to this report. No report is required, however, for vessels which receive no U.S. harvested fish during the reporting period.

APPENDIX VI—WEEKLY REPORT OF MARINE MAMMAL INCIDENTAL CATCH

A. *Report form entries.*

1. Page numbering, vessel name, permit number, designated representative, and date shall be entered in accordance with the instructions for the Weekly Catch Report contained in Appendix IV A 1-3, 9, and 10.

2. For each mammal caught enter:

a. Date caught. Enter the month and day, e.g., for May 6, 1980, enter: 0506.

b. Latitude and longitude to the nearest degree.

c. Species code from Appendix I.

d. Status code as follows: 1—Killed during capture; 2—Injured during capture; 3—Dead prior to capture; and 4—Uninjured.

B. *Telex reports.*

1. To ensure receipt of the Weekly Report of Marine Mammal Incidental Catch in a timely manner, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be sumitted by mail as a confirmation. Designated representatives may include a number of vessel reports in one Telex message providing the information is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex shall contain the message identified "MAMREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Report of Marine Mammal Incidental Catch. Data shall be sumitted as follows:

Vessel name/Permit number//
Date/Latitude/Longitude/Species/Status//
Date/Latitude/Longitude/Species/Status/etc.

C. *Example of a Weekly Report of Marine Mammal Incidental Catch.*

1. The stern trawler NAVIS, permit number LT-79-0001-A, commenced fishing in the Bering Sea Area II on April 27, 1979. No marine mammals were taken incidental to fishing activities until May 15 when two harbor seals (code 967) were taken at 56°10′ N, 171°25′ W. One was killed during retrieval of the trawl and the other was uninjured. On May 17 at 56°35′ N, 171°40′ W, a northern sea lion (code 955) was injured during capture.

2. The text of the Telex report would appear as follows:

MAMREP
NAVIS/LT790001A//
0515/56N/171W/967/1//
0515/56N/171W/967/4//
0517/57N/172W/955/2//

3. The completed form would appear as follows:

WEEKLY REPORT OF MARINE MAMMAL INCIDENTIAL CATCH

VESSEL NAME

PAGE 1 OF 1

N.A.V.I.S.

PERMIT NUMBER

L.T.7.9.0.0.0.1.A

RECORD CATCH OF INDIVIDUAL ANIMALS - ONE ANIMAL PER LINE .

DATE (MM/DD)	LATITUDE (Degrees)	LONGITUDE (Degrees)	SPECIES CODE	STATUS CODE
0515	56N	171W	967	1
0515	56N	171W	967	4
0517	57N	172W	955	2

STATUS CODES

1. KILLED DURING CAPTURE
2. INJURED DURING CAPTURE
3. DEAD PRIOR TO CAPTURE
4. UNINJURED

DESIGNATED REPRESENTATIVE Smith Shipping Co. DATE 5/21/79

D. *Submission instructions.* The submission instructions for the Weekly Catch Report, as contained in Appendix IV D, are applicable to this report. No report is required, however, for vessels which have no incidental catch of marine mammals during the reporting period.

[43 FR 59293, Dec. 19, 1973]

NOTE: For citations to amendments to § 611.9, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 611.10 Fishery support operations.

(a) Fishery support operations are those activities described in § 611.2(r)(3).

(b) Fishery support operations by foreign fishing vessels within the fishery conservation zone are allowed only in those areas and during those times in which the vessel being supported is authorized to conduct directed fisheries, and under such other circumstances as may be designated in these regulations or the permit.

(c) No foreign fishing vessel may conduct fishery support operations in support of a vessel of the United States except as specifically authorized in the supporting vessel's permit.

§ 611.11 Gear conflicts.

(a) Each fishing vessel shall conduct its operations with due regard for the activities of other fishing vessels. Fishing vessels using mobile fishing gear shall take special care to minimize the possibility of conflict with, and damage to, fixed fishing gear.

(b) Each foreign fishing vessel shall maintain on its bridge a current plot of broadcast fixed-gear locations for the area in which it is fishing.

(c) Each foreign fishing vessel which is involved in a gear conflict, or which retrieves the gear of another fishing vessel in its gear, shall immediately notify the appropriate Coast Guard commander as indicated in § 611.4.

(d) Claims against another vessel concerning the loss of or damage to the fishing vessel, fishing gear or catch of a U.S. citizen which may have been caused by a foreign fishing vessel fishing pursuant to the Act may be resolved as follows:

(1) Claims involving loss or damage of property amounting to $25,000 or less must be submitted to binding arbitration whenever demanded by the U.S. claimant or the owner or operator of the foreign fishing vessel which may have caused the loss or damage. If arbitration is demanded, both the U.S. claimant and the owner or operator of the foreign vessel, or their agents must appear at the arbitration proceedings and be bound by the decision of the arbitrator.

(2) Claims involving loss or damage of property amounting to over $25,000 must be submitted to binding arbitration whenever demanded by the U.S. claimant. If arbitration is demanded by the U.S. claimant, both the U.S. claimant and the owner or operator of the foreign vessel, or their agents, must appear at the arbitration proceedings and the parties will be bound by the decision of the arbitrator.

(3) A demand for arbitration must be made in writing to the other party. Any arbitration proceeding under this paragraph shall be conducted according to the Commercial Arbitration rules of the American Arbitration Association, and shall be conducted in the United States. The list from which arbitrators are selected will, whenever possible, include individuals with knowledge in fishery matters or admiralty law.

§ 611.12 Directed fisheries.

(a) No foreign fishing vessel may conduct a directed fishery unless such directed fishery is authorized by, and conducted in accordance with, this Part 611.

(b) It shall be a rebuttable presumption that any haul that contains more than 50 percent by weight or number of fish (as appropriate for the gear in use) of any species or species group (such as "other species") was conducted for the purpose of catching that species or species group and therefore constitutes a directed fishery for that species or species group.

§ 611.13 Incidental catch—prohibited species.

(a) Each foreign fishing vessel shall minimize its catch of prohibited species.

(b) Each foreign fishing vessel shall sort its catch as soon as possible after retrieval of the catch and, after allowing for sampling by an observer (if any), shall return any catch of prohibited species or parts thereof to the sea immediately with a minimum of injury regardless of its condition.

(c) It shall be a rebuttable presumption that any prohibited species or part thereof found on board a foreign fishing vessel was caught and retained in violation of this Part 611.

§ 611.14 Incidental catch—other species.

(a) A fishing vessel may retain its incidental catch of any species for which there is an applicable, unfulfilled national allocation. Regardless of whether or not the catch of such authorized incidental species is retained or discarded it will be counted against the applicable national allocation.

(b) Species of fish which a foreign fishing vessel is not specifically authorized to retain under this part shall be treated as prohibited species in accordance with § 611.13.

§ 611.15 Fishery closure procedures.

(a) A foreign fishing vessel's authorization to engage in fishing shall be cancelled when the Assistant Administrator finds that:

(1) The optimum yield for the directed fishery species has been reached;

(2) The optimum yield for any species or species group (such as "other species") caught as an incidental catch in the directed fishery has been reached;

(3) The total allowable level of foreign fishing for the directed fishery species has been reached;

(4) The total allowable level of foreign fishing for any species or species group (such as "other species") caught as an incidental catch in the directed fishery has been reached;

(5) Any applicable vessel-day limitation for the fishery or area has been reached;

(6) The applicable national allocation for the directed fishery species involved has been reached;

(7) The applicable national allocation for any species or species group (such as "other species") caught as an incidental catch during the directed fishery has been reached; or

(8) The owner or operator of the foreign fishing vessel has not established and maintained the letter of credit required in § 611.22(a)(2)(ii).

(b) Vessel check-in/check-out information, United States surveillance observations, observer reports, and foreign catch and effort reports will be used to make the determinations listed in § 611.15(a). If the National Marine Fisheries Service (NMFS) estimates of catch or other values made during the season differ from those reported by the foreign fleets, immediate efforts will be initiated by the NMFS through the appropriate foreign authorities to resolve such differences. If, however, differences still persist after such efforts have been made, NMFS estimates shall be the basis for decisions and shall prevail.

(c) When closing a fishery, the Assistant Administrator will notify:

(1) The foreign nation(s) involved; and

(2) The designated representative for any affected fishing vessel. If possible, at least 48 hours prior notice of the closing will be given. Failure of the Assistant Administrator to so notify will not relieve the foreign nation of its responsibilities to terminate fishing by its vessels when applicable allocations are reached.

(d) Any cancellation under this section of a foreign fishing vessel's authorization to engage in a fishery shall remain in effect until an applicable new or increased allocation becomes available unless earlier specified by the Assistant Administrator or by the regulations in this Part 611.

[43 FR 59293, Dec. 19, 1978, as amended at 45 FR 86498, Dec. 31, 1980]

§ 611.16 Disposal of fishing gear and other articles.

(a) Except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the Coast Guard, by an authorized officer, or, in the Northwest Atlantic Ocean fishery, by an embarked observer, no fishing vessel may intentionally place into the fishery conservation zone any article, including abandoned fishing gear, which may:

(1) Interfere with fishing or obstruct fishing gear or vessels; or

(2) Cause damage to any fishery resource or marine mammal.

(b) If any such article is encountered, or in the event of accidental or emergency placing of such article into the fishery conservation zone, the operator of the vessel shall immediately report the incident to the appropriate Coast Guard Commander (as provided in § 611.4) giving:

(1) The name of the reporting person and his vessel;

(2) The nature of the article;

(3) The location of the article; and

(4) The time and date of the incident.

(c) All fishing gear which is set or otherwise deployed in a manner in which it may entrap or otherwise catch fish shall be tended as frequently as necessary to ensure that its catch remains suitable for the use intended.

§ 611.17 Scientific research.

(a) The term "scientific research" contained in paragraph (r) of § 611.2 may include certain fishing activities such as the catching, taking, or harvesting of fish in commercial quantities, or the use of gear capable of catching, taking, or harvesting fish in commercial quantities, or fishing in areas, at times, for species, and with gear, any of which may not be otherwise authorized, if such activities are carried out in full cooperation with the United States.

(b) For the purpose of gathering additional management information, the Center Director may authorize limited "scientific research" as described in paragraph (a) of this section under terms and conditions to be specified by the Center Director.

Subpart B—Surpluses

§ 611.20 Total allowable level of foreign fishing.

(a) The total allowable level of foreign fishing (TALFF), if any, with respect to any fishery subject to the exclusive fishery management authority of the United States shall be that portion of the optimum yield (OY) of such fishery which will not be harvested by vessels of the United States. See Appendix 1 to § 611.20.

(b) Each assessment of OY and each assessment of the anticipated U.S. harvest will be reviewed during each fishing season. Adjustments to TALFF's will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors. See Appendix 1 to § 611.20.

APPENDIX 1.—OPTIMUM YIELD (OY), DOMESTIC ALLOWABLE HARVEST (DAH), DOMESTIC ALLOWABLE PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), DOMESTIC NONPROCESSED, RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS

	Species and species code	Areas	OY	DAH	DAP	JVP = (DAH-DAP)	DNP	Reserve	TALFF
Northwest Atlantic Ocean fisheries:									
A. Hake fishery	Hake, silver, 104	Georges Bank	35,000	—	—	—	—	—	26,000
		South New England, Mid-Atlantic	55,000	—	—	—	—	—	34,400
	Hake, red, 105	Georges Bank	6,000	—	—	—	—	—	5,500
		South New England, Mid Atlantic	11,000	—	—	—	—	—	3,000
B. Mackerel fishery	Mackerel, Atlantic, 204		30,000	20,000	—	—	—	—	10,000
C. Trawl fishery	Herring, river, 399		10,000	—	—	—	—	—	500
	Other finfish, 499		247,000	—	—	—	—	—	46,800
D. Squid fishery	Squid, long-finned, 502		44,000	7,000	—	—	—	0	37,000
	Squid, short-finned, 504		30,000	5,000	—	—	—	0	25,000
E. Butterfish fishery	Butterfish, 212		11,000	7,000	—	—	—	0	4,000
Atlantic and Gulf fisheries: A. Atlantic billfish and sharks fishery.	Sharks, 469		6,150	5,000	—	—	—	0	1,150
Western Pacific Ocean fisheries:									
A. Seamount groundfish fishery	Armorheads, alfonsins, and other groundfish, 200, 201, and 499.		2,000	—	—	—	—	—	2,000
B. Pacific billfish and sharks fishery	Swordfish, 264	West Coast	318.4	350.2	—	—	—	0	0
		Hawaii and Midway	93.6	5.9	—	—	—	8.87	78.9
		Guam and Northern Marianas	4.1	0.2	—	—	—	0.4	3.5
		American Samoa	2.4	0	—	—	—	0	2.4
		U.S. possessions	28.1	0	—	—	—	0	28.1
	Blue marlin, 260	West Coast	—	—	—	—	—	—	—
		Hawaii and Midway	612.0	603.4	—	—	—	8.6	78.9
		Guam and Northern Marianas	26.9	3.0	—	—	—	23.9	0
		American Samoa	37.2	2.3	—	—	—	0	34.9
		U.S. possessions	76.3	0	—	—	—	0	76.3
	Black marlin, 253	West Coast	—	—	—	—	—	—	—
		Hawaii and Midway	97.7	104.7	—	—	—	0	0
		Guam and Northern Marianas	0.6	0	—	—	—	0	0.5
		American Samoa	5.3	0	—	—	—	0.1	5.3
		U.S. possessions	6.2	0	—	—	—	0	6.2
	Striped marlin, 261	West Coast	43.2	47.5	—	—	—	0	0
		Hawaii and Midway	223.2	67.9	—	—	—	15.5	139.8
		Guam and Northern Marianas	5.0	0.3	—	—	—	0.5	4.2
		American Samoa	7.8	0	—	—	—	0	7.8
		U.S. Possessions	46.6	0	—	—	—	0	46.6
	Sailfish, 252	West Coast	—	—	—	—	—	0	—
	Spearfish, 262	Hawaii and Midway	42.7	23.4	—	—	—	0.9	17.4
		Guam and Northern Marianas	4.8	0.2	—	—	—	0.5	4.1
		American Samoa	3.5	1.3	—	—	—	0	2.2
		U.S. possessions	14.3	0	—	—	—	0	14.3

	Sharks, 263, 265, 266, 267, and 469.	West Coast	27.6	30.4	—	—	—	0	0
		Hawaii and Midway	1,111.6	0	—	—	—	111.1	1,000.5
		Guam and Northern Marianas	31.9	0	—	—	—	0	31.9
		American Samoa	101.6	0	—	—	—	0	101.6
		U.S. possessions	651.4	0	—	—	—	0	651.4
	Wahoo, 255	West Coast	—	—	—	—	—	—	—
		Hawaii and Midway	288.9	317.8	—	—	—	0	0
		Guam and Northern Marianas	25.1	27.6	—	—	—	0	0
		American Samoa	4.8	2.8	—	—	—	0	0
		U.S. possessions	0	0	—	—	—	0	0
	Mahi mahi, 237, 238	West Coast	—	—	—	—	—	—	—
		Hawaii and Midway	105.0	115.5	—	—	—	0	0
		Guam and Northern Marianas	18.9	20.8	—	—	—	0	0
		American Samoa	6.4	4.4	—	—	—	0	2.0
U.S. possessions			0	0	—	—	—	0	0
Alaska fisheries:									
A. Bering Sea and Aleutian Islands groundfish fishery.	Pollock, 701	Bering Sea	1,000,000	27,050	—	21,550	—	0	972,950
		Aleutians	100,000	0	—	0	—	0	100,000
	Yellowfin sole, 720		117,000	7,900	—	7,800	—	0	109,100
	Turbots, 721, 118		90,000	1,400	—	1,200	—	0	68,600
	Other flounders, 129		61,000	2,825	—	2,725	—	0	58,175
	Pacific ocean perch,[4] 780	Bering Sea[1]	3,250	430	—	330	—	0	2,820
		Aleutians[2]	7,500	430	—	330	—	0	7,070
	Other rockfish, 849		7,727	250	—	150	—	0	7,477
	Sablefish, 703	Bering Sea[1]	3,500	300	—	200	—	0	3,200
		Aleutians[2]	1,500	300	—	200	—	0	1,200
	Pacific cod, 702		70,700	22,265	—	15,065	—	0	36,435
	Atka mackerel, 207		24,800	720	—	720	—	0	24,080
	Squid, 509		10,000	50	—	50	—	0	9,950
	Other species[3] 499		74,249	750	—	550	—	0	73,499
B. Bering Sea and Aleutian Islands herring fishery.	Herring, 209		([11])	([11])	([11])	([11])	([11])	([11])	([11])
C. Tanner crab fishery	*C. opilio* and hybrid, 610, 684.	I, II, III, IV	58,984	51,484	—	0	—	0	[10] 7,500
	C. bairdi, 501	I, II, III, IV	15,000	15,000	—	0	—	0	[10] 0
D. Snail fishery	Snails (meats), 673		3,000	0	—	0	—	0	3,000
E. Gulf of Alaska groundfish fishery	Pollock, 701	Western[5]	66,500	6,737	29	6,708	—	13,300	46,463
		Central[5]	111,066	15,540	6,277	9,263	—	22,213	73,313
		Eastern[5]	19,367	2,584	811	1,773	—	3,874	12,909
		Total	196,933	24,861	—	—	—	39,387	132,685
	Pacific Cod, 702	Western	19,320	2,193	280	1,213	700	3,864	13,263
		Central	39,130	7,058	4,060	1,598	1,400	7,826	24,246
		Eastern	11,550	2,415	327	688	1,400	2,310	6,825
		Total	70,000	11,666	—	—	—	14,000	44,334
	Flounders, 129	Western	12,133	816	116	700	—	2,427	8,890
		Central	17,150	1,307	350	957	—	3,430	12,413
		Eastern	9,800	1,587	1,050	537	—	1,960	6,253
		Total	39,083	3,710	—	—	—	7,817	27,556

APPENDIX 1.—OPTIMUM YIELD (OY), DOMESTIC ALLOWABLE HARVEST (DAH), DOMESTIC ALLOWABLE PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), DOMESTIC NONPROCESSED, RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS—Continued

	Species and species code	Areas	OY	DAH	DAP	JVP = (DAH-DAP)	DNP	Reserve	TALFF
	Pacific Ocean Perch,[4] 780	Western	3,150	402	29	373	—	630	2,118
		Central	9,217	1,465	344	1,121	—	1,843	5,909
		Eastern	16,800	1,534	93	1,441	—	3,360	11,906
		Total	29,167	3,401	—	—	—	5,833	19,933
	Other Rockfish,[6] 849	Total	8,867	1,050	—	—	—	1,773	6,044
	Sablefish,[7] 703	Western	2,450	315	117	198	—	490	1,645
		Central	4,433	1,423	1,167	256	—	887	2,123
		Yakutat district[5]	3,966	1,610	1,377	233	—	1,656	700
		Southeast outside[5]	3,500	3,395	3,290	105	—	0	105
		Total	14,349	6,743	—	—	—	3,033	4,573
	Atka mackerel, 207	Western	5,458	338	0	338	—	1,092	4,028
		Central	24,309	1,260	0	1,260	—	4,862	18,187
		Eastern	3,717	817	0	817	—	743	2,157
		Total	33,484	2,415	—	—	—	6,697	24,372
	Squid, 509	Total	5,833	175	—	—	—	1,167	4,491
	Other species,[8] 499	Total	18,900	2,007	—	—	—	3,780	13,113
	Thornyhead rockfish, 749	Total	4,375	7	—	—	—	875	3,493
North Pacific Ocean fisheries: Washington, Oregon, and California Fisheries	Whiting, Pacific, 704		175,000	55,000	—	43,000	—	0	120,000
	Flounders, 129		38,400	—	—	—	—	0	[9] 120
	Mackerel, jack, 208		55,000	—	—	—	—	0	3,600
	Rockfish, excluding Pacific ocean perch.		43,300	—	—	—	—	0	[9] 886
	Pacific ocean perch, 780		1,000	—	—	—	—	0	[9] 74
	Sablefish, 703		13,400	—	—	—	—	0	[9] 208
	Other species, 499		26,100	—	—	—	—	0	[9] 600

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[1] Bering Sea means fishing areas I, II, and III in Figure 2, Appendix II of 50 CFR 611.9.

[2] Aleutian means fishing Area IV in Figure 2, Appendix II of 50 CFR 611.9.

[3] The category "other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, octopus, and all other finfish and marine invertebrates except those listed in the table and "unallocated species." See § 611.93(b)(2)(iii) for the definition of "unallocated species."

[4] The category "Pacific ocean perch" includes *Sebastes* species *S. alutus* (Pacific ocean perch), *S. polyspinus* (northern rockfish), *S. aleutianus* (rougheye rockfish), *S. borealis* (shortraker rockfish), and *S. zacentrus* (sharpchin rockfish).

[5] See figure 1 of section 611.92(a) for description of regulatory areas and districts.

[6] The category "other rockfish" includes all fish of the genus *Sebastes* except the category "Pacific ocean perch" as defined in footnote 4 above and *Sebastolobus* (thornyhead rockfish).

[7] Excludes values for the Southeast Inside District, which is not governed by these regulations.

[8] The category "other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus.

[9] Allowable incidental catch of these species is determined as a percentage of the Pacific whiting TALFF (see § 611.70(b)(1)(ii)(A).

[10] TALFF of *C. opilio* Tanner crab may be taken only north of 58°N. latitude and west of 164°W. longitude. Any *C. bairdi* Tanner crab taken incidentally to the permitted harvest of *C. opilio* Tanner crab may be retained.

[11] Reserved.

(16 U.S.C. 1801 et seq.) [43 FR 59293, Dec. 19, 1978, as amended at 45 FR 84806, Dec. 23, 1980; 45 FR 86498, Dec. 31, 1980]

EDITORIAL NOTE: For amendments affecting Appendix I, issued under § 611.20, but not carried in the Code of Federal Regulations, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 611.21 Allocations.

(a) The Secretary of State, in cooperation with the Secretary, determines the allocation among foreign nations of the TALFF. The Secretary of State officially notifies each foreign nation of its allocation by fishery and species. The burden of ascertaining and accurately transmitting current allocations and status of harvest of an applicable allocation to fishing vessels shall be upon the foreign nation and the owner or operator of the foreign fishing vessel.

(b) *Effort Plan.* (1) After the Secretary of State notifies each foreign nation of its allocation or reallocation of target speies, each such nation must prepare and submit an effort plan to the Assistant Administrator for Fisheries, NOAA, NMFS, 3300 Whitehaven Street NW., Washington, D.C. 20235. Effort plans may be submitted after catching begins if adequate time to prepare the plan does not exist between the allocation or reallocation and the start of catching, but the plan must be submitted before 30 days have elapsed after a corresponding allocation or reallocation. The effort plan should follow this format:

NAME OF COUNTRY; FISHING AREA (BSA, NWA, ETC.)

Gear type	Type/size of vessel	Main target species	Approximate dates of fishing in FCZ	Estimated catch per vessel day

In the Pacific billfish and sharks fishery, the fishing area should be further subdivided and identified as West Coast, Hawaii and Midway Islands, Guam and Northern Marianas Islands, American Samoa, or U.S. possessions.

(2) Nations will not be required to submit revised plans if, during actual fishing, it is necessary to deviate from the plan other than as the result of reallocations.

(3) In those cases when the allocation or reallocation is less than 1,000 m.t. no effort plan need be submitted unless specifically requested by the National Marine Fisheries Service.

(16 U.S.C. 1801 et seq., and 22 U.S.C. 1971 et seq.)

[43 FR 59293, Dec. 19, 1978, as amended at 44 FR 76297, Dec. 26, 1979; 45 FR 86948, Dec. 31, 1980]

§ 611.22 Fee schedule for foreign fishing permits.

(a) The fee charges for fishing by foreign flag vessels for fish over which the United States exercises exclusive fishery management authority required by section 204(b)(10) of the Act and § 611.3(c)(3) of this part are specified as follows:

(1) *Permit fees* (i) Each vessel permit application submitted under § 611.3 must be accompanied by a fee of $50.00 per vessel, plus the surcharge required under paragraph (b) of this section. At the time the application is submitted to the Department of State, the fees must be sent to: Division Chief, Permits and Regulations Division, F/CM7, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C. 20235. The permit fee payment must be accompanied by a list of the vessels for which payment is made.

(ii) Permit fees may be refunded if the application is not approved. On a case-by-case basis, the Assistant Administrator may refund permit fees if the country's allocation is significantly and unexpectedly reduced.

On a case-by-case basis, the Assistant Administrator may allow the substitution of a similar vessel when the originally permitted vessel is disabled or otherwise cannot participate in the fishery.

(2) *Poundage fees.* (i). If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table I, plus the surcharge re-

quired by paragraph (b) of this section.

TABLE I.—(DOLLARS PER METRIC TON)

Species and Poundage Fee

1. Butterfish—71
2. Hake, red—9
3. Hake, silver—11
4. Herring, river—10
5. Mackerel, Atlantic—24
6. Other finfish (Atlantic)—48
7. Sharks (Atlantic)—30
8. Squid, *Illex*—14
9. Squid, *Loligo*—52
10. Shrimp, royal red—reserved
11. Crab, Tanner—44
12. Atka mackerel—8
13. Cod, Pacific—27
14. Flounders (Alaska)—10
15. Flounders (WOC)—55
16. Jack mackerel—7
17. Pacific ocean perch—44
18. Other groundfish (Alaska)—9
19. Other fish (WOC)—22
20. Pollock (Alaska)—14
21. Sablefish (Alaska)—66
22. Sablefish (WOC)—71
23. Rockfish—26
24. Snails—19
25. Squid (Pacific)—10
26. Whiting, Pacific—6
27. Precious Coral—reserved
28. Seamount groundfish—14
29. Dolphinfish (mahi maki) (American Samoa)—52
30. Wahoo (American Samoa)—8
31. Sharks (Pacific) (American Samoa)—4
32. Swordfish (Hawaii)—224
33. Swordfish (American Samoa)—45
34. Swordfish (Guam, Northern Marianas, U.S. possessions)—154
35. Striped marlin (Hawaii)—259
36. Striped marlin (American Samoa)—35
37. Striped marlin (Guam, Northern Marianas, U.S. possessions)—154
38. Other Pacific billfish (Hawaii)—103
39. Other Pacific billfish (American Samoa)—35
40. Other Pacific billfish (Guam, Northern Marianas, U.S. possessions)—140
41. Sharks, Pacific (Hawaii) (Guam, Northern Marianas, U.S. possessions)—8

(ii) *Method of Payment of Poundage Fees.* If a nation chooses to accept an allocation, an irrevocable letter of credit must be established and maintained for at least 25 percent of the previous year's total allocations at the rate in paragraph (a)(2)(i) of this section, or as determined by the Assistant Administrator, plus the surcharge required by paragraph (b) of this section. The Department of Commerce, NOAA, must be designated as the beneficiary. The customer must pay all service charges. The letter of credit must be confirmed by a Federally chartered bank in the United States. No catching will be permitted unless (A) the letter of credit is established, and (B) authorized written notice of its issuance and confirmation are provided to the Assistant Administrator at the address in paragraph (a)(1) of this section. No catching will be permitted if the amount of the letter of credit falls below 25 percent of the poundage fee plus the surcharge required by paragraph (b) of this section.

(iii) *Assessment of Poundage Fees.* Poundage fees will be assessed quarterly for the actual catch during January-March, April-June, July-September, and October-December. The appropriate Regional Director will reconcile catch figures with each country following the procedures of § 611.15(b). When the catch figures are agreed upon, NOAA will present a bill for collection as the documentary demand for payment to the confirming bank. If, after 45 days from the end of the quarter, catches have not been reconciled, the estimate of the regional Director will stand and a bill will be issued for that amount. If necessary, the catch figures may be refined by the Regional Director during the next 60 days, and any modifications will be reflected in the next quarter's bill.

(iv) In 1981, nations must pay an additional 20 percent of the annual poundage fees, as determined in paragraph (a)(2)(ii) of this section, no later than January 30, 1981. Half of this amount will be credited to the second quarter bill, and half to the third quarter bill.

(3) *Method of payment.* (i) All payments received must be drawn in U.S. dollars, payable at a bank in the United States, and be made payable to the U.S. Department of Commerce, NOAA. In addition, payments from private firms or individuals should be in the form of a certified check.

(ii) Remittances should be sent to the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C.

20235, Attention: F3. To facilitate processing, each remittance should be accompanied by a copy of the applicable bill for collection for identification purposes.

(iii) Refunds of poundage fees for a calendar year will be made only upon written application received by NMFS, Washington, D.C. on or by the subsequent May 30. Refund requests must contain the following information:

(A) A statement that the amount involved is more than $100.

(B) An explanation of the difference between the amount of actual catch and the amount authorized, and the reasons for the difference.

(b) The owner or operator of each foreign vessel who submits a vessel permit application under paragraph (a)(1) of this section or who accepts and pays poundage fees under paragraph (a)(2) of this section must pay a surcharge equal to 20 percent of the fees. The Assistant Administrator may reduce or waive the surcharge if he determines that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently.

[43 FR 59293, Dec. 19, 1978, as amended at 44 FR 76297, Dec. 26, 1979; 45 FR 82268, Dec. 15, 1980; 45 FR 86498, Dec. 31, 1980; 46 FR 2081, Jan. 8, 1981]

Subpart C—Atlantic Ocean

§ 611.50 Northwest Atlantic Ocean fishery.

(a) *Purpose.* This subpart regulates all foreign fishing conducted under a Governing International Fishery Agreement within the fishery conservation zone in the Atlantic Ocean north of 35°00′N. latitude, except for the longline fishery which is regulated under § 611.60.

(b) *Authorized fishery*—(1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *Fishing permitted.* Vessels subject to this section which fish with trawl gear may fish only during the seasons and with the methods specified in Table I of this section. Vessels subject to this section which fish with any other gear need not comply with the limitations specified in Table I.

(3) *TALFF.* The TALFFs for the Northwest Atlantic ocean fishery are set forth in Appendix 1 to § 611.20.

(4) *Species definitions.* The category "other finfish" used in TALFFs and in allocations includes all species except:

(i) The other allocated species, namely: silver hake, red hake, short-finned squid, long-finned squid, Atlantic mackerel, river herring (includes alewife, blueback herring, and hickory shad), and butterfish; and

(ii) The prohibited species, namely: American shad, Atlantic cod, Atlantic herring, Atlantic menhaden, Atlantic redfish, Atlantic salmon, all billfish, black sea bass, bluefish, croaker, haddock, pollock, scup, sea turtles, sharks (except dogfish), spot, striped bass, tilefish, yellowtail flounder, weakfish, Continental Shelf fishery resources, and other invertebrates (except nonallocated squids).

Table 1. Fishing gear and season restrictions by fishing area.
Northwest Atlantic Ocean Fishery

Off-Bottom Gear Only

Area[1]	January	February	March	April	May	June	July	August	September	October	November	December
1										//////////	//////////	//////////
2	//////////	//////////	//////////			////	//////////	//////////	////[2]	//////////	//////////	//////////
3	//////////	//////////	//////////							//////////	//////////	//////////
4								//////////	//////////	//////////	//////////	//////////
5								//////////	//////////	//////////	//////////	//////////

Bottom Gear and Off Bottom Gear

Area[1]	January	February	March	April	May	June	July	August	September	October	November	December
1												
2												
3												
4	//////////	//////////	//////////									
5	//////////	//////////	//////////									

Unless otherwise noted, seasons open at 0001 hours local time on the first day of the month and terminate at 2400 hours local time on the last day of the month.

[1] Coordinates of the various areas are set forth in Figure 1 to Appendix II of §611.9.

[2] Season begins at 0001 hours local time on June 15, and terminates at 2400 hours local time on September 15.

////////// Denotes maximum open fishing season, subject to possible earlier closure for some or all nations in accordance with §611.15

(5) *Closures.* The taking of any species for which a nation has an allocation is permitted, provided that:

(i) The vessels of the foreign nation have not caught the allocation of that nation for any species or species group (e.g., "other finfish"). When vessels of a foreign nation have caught an applicable allocation of any species, all further fishing (as defined in § 611.2(r)(1)) by vessels of that nation must cease, even if other allocations have not been reached. Therefore, it is essential that foreign nations plan their fishing strategy to ensure that the reaching of an allocation for one species does not result in the premature closing of a nation's fishery for other allocated species.

(ii) The fishery has not been closed for other reasons under § 611.15.

(6) *Allocation utilization.* Foreign fishing vessels may elect to retain or discard allocated species; however, the computation of allocation utilization and fee refunds will be based on the total quantity of that species which was caught. Prohibited species must always be returned to the sea as required under § 611.13.

(7) *Additional authorization.* For the purpose of gathering additional management information, the Regional Director may authorize limited foreign fishing in areas, during seasons, and using gear not otherwise authorized in this Subpart. Special reporting requirements for such fishing may be specified by the Regional Director.

(c) *Gear restrictions.* (1) No foreign fishing vessel may use on the bottom a trawl net having, in any part of the net, meshes of less than 60 millimeters (inside measure when wet after use).

(2) No foreign fishing vessel may use any trawl net having, in any part of the net, meshes of less than 45 millimeters (inside measure when wet after use).

(3) Meshes are to be measured by a flat, wedge-shaped gauge having a taper of 2 centimeters in 8 centimeters and a thickness of 2.3 millimeters, inserted into meshes under a pressure or pull of 5 kilograms. The mesh size of a net shall be taken to be the average of the measurements of any series of twenty consecutive meshes, at least ten meshes from the lacings, and, when measured in the codend of the net, beginning at the after end and running parallel to the long axis.

(4) No foreign fishing vessel may use any device or method which would have the effect of reducing mesh size, except that:

(i) Chafing gear may be attached to the underside of the codend of bottom trawl nets. Chafing gear may not be attached to trawl nets having a mesh size of less than 60 millimeters.

(ii) Net strengtheners may be attached to the codend of trawl nets providing such net strengtheners consist of mesh material identical or similar to the material of the codend and have a mesh size of at least twice the minimum authorized mesh size.

(5) To qualify as off-bottom gear, a trawl net must:

(i) Be a truly pelagic trawl net, operated with neither the doors nor the net mouth in contact with the bottom; or

(ii) Be rigged so that the net mouth operates not less than 60 centimeters above the bottom. An otherwise standard bottom trawl net will be considered to meet this requirement if:

(A) It has attached perpendicular to the net mouth "hanging line" chains not shorter than 60 centimeters;

(B) Each chain hangs loose or is attached to steel bobbins; and

(C) No weights or other attachments are directly secured to the "hanging line" other than the chains specified in paragraph (c)(5)(ii)(A) of this section, or flotation devices.

(d) *Fixed gear avoidance.* (1) No foreign fishing vessel may trawl in any fixed-gear area broadcast by the Coast Guard (see § 611.11 and paragraph (d)(2) of this section). Broadcasts of fixed-gear areas will include a buffer zone around the actual reported locations of the fixed gear.

(2) The locations (latitude and longitude) of fixed-gear areas are broadcast at 1350 G.m.t. on the first day of each month by Coast Guard Communications Station Boston (NMF) on 472 kHz radiotelegraphy. Broadcast is also made on 8502 kHz via simultaneous keying when necessary.

Voice broadcasts of the locations (LORAN A lines) of fixed-gear areas are made in English each day: Coast Guard Communications Station Boston (NMF) broadcasts at 1405 G.m.t. on 2670 kHz; Coast Guard Communications Station Portsmouth (NMN) broadcasts at 1905 G.m.t. on 2670 kHz; and the Boston and Norfolk marine operators broadcast after their scheduled marine information broadcasts.

The list of areas is updated each day at 1350 G.m.t. All broadcasts are numbered sequentially by month, day and year. A printed monthly summary of fixed-gear information is available from Commander (Ao 1), Coast Guard Atlantic Area, Governors Island, New York, N.Y. 10004 (Telephone: 212-264-0645; Telex 126831).

(e) *Collection, maintenance, and reporting of data.* In addition to the requirements of § 611.9, each foreign nation or foreign fishing vessel shall collect, maintain or report on a timely basis accurate data relating to fishing operations as specified below. The following logs or reports are required:

(1) *Fishing log.* Each vessel which engages in fishing, as defined in § 611.2(r)(1), shall maintain a record of all catches during the permit period. While no form is specified, this fishing log shall contain the following information on a set-by-set basis:

(i) Date;

(ii) Trawl number (number sets consecutively each day);

(iii) Times of commencement and completion of each set;

(iv) Vessel's positions in degrees and minutes of latitude and longitude at the times of commencement and completion of each set;

(v) Type of gear used;

(vi) Mesh size (inside measure when wet after use);

(vii) Quantity of total catch to the nearest tenth of a metric tone (o.1 m.t.);

(viii) Quantity of each species to the nearest tenth of a metric ton (0.1 m.t.) (use species codes from Appendix I to § 611.9);

(ix) Disposition of the catch, by species (human consumption (including fish consumed on board), fishmeal, or discarded).

(2) *Quarterly scientific report.* (i) Each foreign nation whose vessels engage in fishing in the Northwest Atlantic Ocean fishery shall submit not later than three months after the close of each quarter a quarterly scientific report (QSR) of the catch and effort of each such vessel to:

Director, Northeast Fisheries Center, National Marine Fisheries Service, Woods Hole, Massachusetts 02543.

Quarterly scientific reports shall be submitted for each vessel for each 30 minute latitude by 30 minute longitude area in which the vessel engaged in fishing, and for each gear type used by the vessel in a given 30 minute latitude by 30 minute longitude area, by semimonthly periods. Effort data must be submitted whether or not any catch was taken. The catch of each species taken, even, if discarded, must be shown in tenths of a metric ton (0.1 m.t.) (live round weight).

(ii) Quarterly scientific reports should be completed in accordance with the instructions in Appendix I to this section and may be submitted in the format shown in Figure 1 to Appendix I or by magnetic tape, computer cards, or printouts. Data may also be reported using the 1977 version of the STATLANT 21-B form and the procedures established for that form.

Figure 1

QSR-1

Year/Quarter	Vessel Name	Permit Number	Vessel Size Code
Area Designation	Fishing Gear	Target Species/Codes	Page ___ of ___

EFFORT DATA

Semimonthly Period						
Effort by Standard Units						
Days on Grounds						
Days Fished						
Hours Fished						

CATCH DATA (live round weight in hundredths of a metric ton (0.01 m.t.))

Species Name	Species Code							Total by Species
Total by Semimonthly Period								Grand Total

A. *Report form entries.* See Figure 1 for report form.

1. Year/Quarter: Enter the year and quarter for which the report is prepared. For example: 1979/2 designates April, May, and June of 1979.

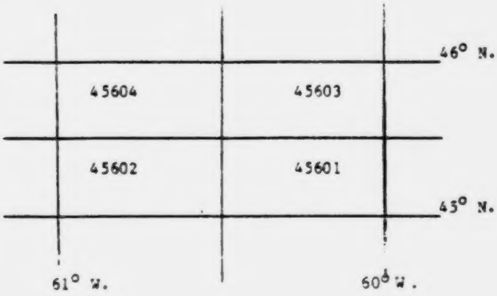
2. Vessel name: Enter the vessel name as shown on the vessel's permit.

3. Permit number: Enter the current permit number without hyphens.

4. Vessel size code: Enter the code number which indicates the vessel's tonnage (GRT) from the following list:

Tonnage (GRT)	Code number
0 to 24.9	1
25 to 49.9	2
50 to 149.9	3
150 to 499.9	4
500 to 999.9	5
1000 to 1999.9	6
2000 and over	7

5. Area designation: Enter the five digit code which indicates the latitude, longitude and quadrant of the 30 minute latitude by 30 minute longitude area for which the report is submitted. The first two digits of the code are determined from the latitude in degrees (disregarding minutes); the second two digits are determined by the longitude in degrees (disregarding minutes); and the fifth digit is determined from the quadrant within the one degree latitude by one degree longitude area as follows: southeast-1, southwest-2, northeast-3, and northwest-4. For example, the 30 minute latitude by 30 minute longitude areas 45601, 45602, 45603, and 45604 are shown in the following diagram:



A separate report is required for each area designation in which each vessel fishes.

6. Fishing gear: Enter the standard abbreviations from the following list for the fishing gear used in the area designated in item 5. A separate report is required for each fishing gear used in the area.

Gear category	Standard abbreviation
Bottom otter trawl (side)	OTB-1
Bottom otter trawl (stern)	OTB-2
Off-bottom otter trawl (see § 611.50(c)(5) for definition of this gear)	OTB-3
Midwater otter trawl (side)	OTM-1
Midwater otter trawl (stern)	OTM-2
Bottom pair trawl	PTB
Midwater pair trawl	PTM
Purse seine	PS
Gillnets (set)	GNS
Gillnets (drift)	GND
Gillnets (fixed)	GNF
Longlines (set)	LLS
Longlines (drift)	LLD
Traps	FIX
Miscellaneous gears (other than above)	MLS

7. Target species/codes: Enter the common names and species codes (as listed in Appendix I to § 611.9) of the main species sought in the area designated during the period of the report.

8. Page numbering: Sequentially number each page and the total number of pages in the submission for each vessel. For example, if a stern trawler fished during the period of the report by bottom trawl in three different 30 minute latitude by 30 minute longitude areas and by off-bottom trawl in two of those same areas, the pages of that vessel's report would be numbered "page 1 of 5" through "page 5 of 5".

9. Semimonthly periods: Enter the designation for each semimonthly period of the quarter during which fishing effort was expended in the area designated and using the gear indicated. The designation is a three digit number consisting of the numerical equivalent of the month (01 for January through 12 for December) followed by the numeral 1 for days 1-15 of each month or the number 2 for days 16 through the end of the month. Thus, the semimonthly period June 16-30 would be designated 062 and the semimonthly period July 1-15 would be designated 071.

10. Effort by standard units: Whenever possible, enter the effort expended during each semimonthly period in the standard units shown below for the fishing gear indicated on the report.

Fishing gear	Standard effort units	Computation
Purse seines	No. of sets	Number of times the gear has been set or shot, whether or not a catch was made.
Trawls	No. of hours fished	Number of hours during which the trawl was in the water fishing.
Gillnets (set or drift)	No. of 100 meter net sets	Length of nets in meters divided by 100 multiplied by the number of sets made.
Gillnets (fixed)	No. of 100 meter net clearings	Length of nets in meters divided by 100 multiplied by the number of times the net was cleared.
Traps	Pot-days	Number of days pots are in the water and fishing multipled by the number of pots hauled.
Longlines (set or drift)	Hook-days per thousand hooks.	Number of hooks fished divided by 1000 multiplied by number of days fished.

11. Days on grounds: Enter the number of days the vessel was on the fishing grounds. Any portion of a day on the grounds shall be counted as one day on the grounds.

12. Days fished: Enter the number of days the vessel fished. Any portion of a day fished shall be counted as one day fished.

13. Hours fished: Enter the number of hours fished to the nearest hour.

14. Species name: Enter the common names of each species caught in the area designated during the period of the report by the gear indicated. Attach additional sheets as necessary to include all species caught.

15. Species code: Enter the species code (as listed in Appendix I to § 611.9) corresponding to each species named.

16. Catch data: For each species, enter the live round weight to the nearest hundredth of a metric ton (0.01 m.t.) of fish cought, by semimonthly period. For quantities which are not retained, add the suffix "D" (for discarded) following the specific semimonthly catch figure for such discarded quantities.

17. Total during the semimonthly period: Enter the total of all species caught in the area and by the gear indicated during the semimonthly period.

18. Total by species: Enter the total for each species caught in the area and by the gear indicated.

19. Grand total: Enter the total fish caught in the area and by the gear indicated during the period of the report.

B. *Submission instructions.* Submission of the QSR by magnetic tape, computer cards, or printouts will be accepted in lieu of the report form shown in Figure 1. Data may also be reported using the 1977 version of the STATLANT 21-B form and the procedures established for that form. Questions regarding submission should be directed to:

Director, Northeast Fisheries Center, National Marine Fisheries Service, Woods Hole, Massachusetts 02543.

[43 FR 59293, Dec. 19, 1978, as amended at 44 FR 15727, Mar. 15, 1979; 44 FR 17184, Mar. 21, 1979; 44 FR 46286, Aug. 2, 1979; 44 FR 76541, Dec. 27, 1979; 45 FR 14046, Mar. 4, 1980; 46 FR 1739, Jan. 7, 1981]

§ 611.51 Northwest Atlantic squid fishery.

(a) *Definitions.* For purposes of this section, "joint venture harvest" means U.S. harvested squid transferred at sea to foreign processing vessels.

(b) *Allocations of Reserves*—(1) *Projections.* During August in the case of *Illex,* and during September in the case of *Loligo,* the Regional Director will project the total amounts of squid that will be harvested by U.S. fishermen during the entire fishing year. For *Illex,* the monthly catches from April through July (exclusive of joint venture harvest) will be multiplied by a factor of 2.9 to obtain a projected annual harvest. For *Loligo,* the monthly catches from April through August (exclusive of joint venture harvest) will be multiplied by a factor of 1.3 to obtain a projected annual harvest.

(2) *Joint ventures.* If any permits authorizing receipt of U.S. harvested squid have been issued to foreign processing vessels by August 15 (for *Illex*) or by September 15 (for *Loligo*), the Regional Director will add to the projected annual harvest the amounts of squid authorized to be received by such permits.

(3) *Allocation of reserves.* If the projected amount of either species of squid to be harvested by U.S. fishermen, including joint venture harvest, exceeds the initial level of harvest specified in § 655.21(a), the Regional Director shall leave the excess of the reserve to allow the U.S. fishery for that species to continue without closure throughout the year. The Regional Director shall allocate the rest

of the reserve for that species to the TALFF. If the projected amount of either species of squid to be harvested by U.S. fishermen, including joint venture harvest, does not exceed the initial level of harvest specified in § 655.21(a), the Regional Director shall allocate the entire reserve for that species to the TALFF.

(4) *Notice of allocation.* On or about September 1 for *Illex*, and on or about October 1 for *Loligo*, the Regional Director shall:

(i) Notify the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Councils of his decision; and

(ii) Publish a notice of the decision on allocation in the FEDERAL REGISTER.

(5) *Subsequent allocations.* After the initial allocation decision is made, the Regional Director may allocate any remaining portion of the reserve to TALFF, if he determines that the domestic harvest, including joint venture harvest, will not attain the level projected under paragraphs (b) (1) and (2) of this section, plus any joint venture harvest authorized after the initial decision. Notice of subsequent allocation will be made according to the procedures in paragraph (b)(4) of this section.

[45 FR 63865, Sept. 26, 1980]

§ 611.52 Mackerel fishery.

(a) *Projections.* During October, the Regional Director will project the total amount of mackerel that will be harvested by U.S. fishermen during the entire fishing year. In making this projection, the Regional Director will consider not only the actual reported domestic harvest through September 30, but also the ability and intent of domestic harvesters and processors to harvest and process Atlantic mackerel during the remainder of the fishing year.

(b) *Allocation of reserve.* If the projected amount of mackerel to be harvested by U.S. fishermen exceeds the initial level of harvest specified as DAH in Appendix 1 to § 611.20, the Regional Director will leave the excess in the reserve to allow the U.S. fishery to continue without closure throughout the year. The Regional Director will allocate the rest of the reserve to the total allowable level of foreign fishing (TALFF). If the projected amount of mackerel to be harvested by U.S. fishermen does not exceed the initial level of harvest specified as DAH in Appendix 1 to § 611.20, the Regional Director will allocate the entire reserve to TALFF.

(c) *Notice of allocation.* (1) By November 1 the Regional Director will publish a notice stating the amount of mackerel proposed to be allocated from reserve to TALFF in the FEDERAL REGISTER. The public will be given 15 days from the date of publication to comment on the proposed allocation. During the comment period, the Regional Director will consult with the Executive Director of the Mid-Atlantic Council on the consistency of the proposed allocation with the objectives of the FMP.

(2) The Regional Director will publish a final notice of the decision on allocation in the FEDERAL REGISTER. It will contain a summary of all comments and relevant information received during the comment period and the latest catch statistics available for Atlantic mackerel.

(d) *Subsequent allocations.* After the initial allocation decision is made, the Regional Director may allocate any remaining portion of the reserve to TALFF, if he determines that the domestic harvest will not attain the level projected under paragraph (a) of this section. Notice of subsequent allocations will be made according to the procedures stated in paragraph (c) of this section.

[45 FR 77446, Nov. 24, 1980]

§ 611.53 Hake fishery.

(a) *Definitions.* For purposes of this section, joint venture processing (JVP) means U.S. harvested hake transferred at sea to foreign processing vessels.

(b) *New estimates of DAP.* Upon receipt of an application for a permit for a foreign processing vessel to receive U.S. harvested hake, the Regional Director shall make new estimates of DAP based on the most recent information available. If the initial DAH plus the reserve (if any) is greater than the new estimate of DAP, the excess is available for joint venture processing. If the new estimate of DAP is greater than the initial DAH plus the reserve (if any), no excess is available for joint venture processing.

(c) *Respecification of JVP.* The Regional Director shall publish in the Federal Register the new estimate of DAP and the respecification of the amount available for joint venture processing.

[46 FR 1739, Jan. 7, 1981]

Subpart D—Atlantic, Caribbean, and Gulf of Mexico

Source: 46 FR 27493, May 20, 1981, unless otherwise noted.

§ 611.60 General provisions.

(a) *Purpose.* This subpart regulates:

(1) All foreign fishing conducted under a Governing International Fishery Agreement (GIFA) within the fishery conservation zone (FCZ) in the Atlantic Ocean south of 35°00′ N. latitude, in the Gulf of Mexico, and in the Caribbean Sea; and

(2) All foreign longline fishing conducted under a GIFA which involves the catching of any species of billfishes, sharks, or other fish in the FCZ in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

(b) *Authorized fishery.* (1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *TALFF.* The TALFFs are set forth in Appendix 1 to § 611.20.

(3) *Permitted fishing.* Foreign fishing authorized under this subpart may be conducted only during the seasons, in the open areas, and with the gear specified in §§ 611.61 and 611.62.

(c) *Prohibited species.* (1) All species of fish over which the United States exercises exclusive fishery management authority and for which there is no applicable allocation are prohibited species and shall be treated in accordance with § 611.13. Fish caught in excess of an applicable national allocation are prohibited species.

(2) As a means of rebutting the presumption of § 611.13(c), a vessel may store all prohibited species caught outside the FCZ in a separate part of the hold that can be sealed, and may have its holds inspected and sealed before commencing fishing in the FCZ. Seals affixed during such inspection shall be maintained in an unbroken condition during the time the fishing vessel is in the FCZ. Such inspections may be obtained at Venice or New Orleans, La., Key West, Fla., Mayaguez, P.R., or Norfolk, Va., upon 48 hours advance notification to: Regional Director, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Fla. 33702 Telephone: 813-893-3141.

(3) Additional ports for hold inspection may be arranged with the Regional Director.

(4) The designation of ports for hold inspections does not modify the port entry arrangements or requirements (if any) of GIFAs or the notification requirements of any other laws or regulations of the United States.

(d) *Open area.* Except for the closed area set forth in paragraph (e) of this section, and § 611.62(b), foreign fishing authorized under this subpart may be conducted in that portion of the FCZ in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea beyond 12 nautical miles from the baseline used to measure the U.S. territorial sea.

(e) *Closed area.* The area known as East and West Flower Garden Banks is closed to foreign fishing. The Flower Garden Banks are located in the Gulf of Mexico approximately 110 nautical miles southeast of Galveston, Texas, and 120 nautical miles south of Cameron, Louisiana. The area encloses a proposed national marine sanctuary, which consists of approximately 257 square nautical miles and comprises the waters overlaying and surrounding those banks to a distance of 4 nautical miles from the 100 meter isobath of each bank. The boundary of the closed area is described by rhumb lines connecting the following points:

Point	Latitude	Longitude
1	27°46.5′N	93°57.0′W.
2	27°56.0′N	93°57.0′W.
3	28°04.0′N	93°32.0′W.
4	27°51.0′N	93°28.0′W.
5	27°47.0′N	93°45.5′W.
6	27°46.5′N	93°57.0′W.

§ 611.61 Atlantic billfish and sharks fishery.

(a) *Purpose.* This section regulates all foreign fishing conducted under a GIFA which involves the catching of any species of billfish or sharks in the FCZ in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.

(b) *Open season and closures.* Foreign fishing under this section may be conducted throughout the year, except that any retention of sharks shall terminate when the applicable national allocation has been reached. The closure provisions of § 611.15(a) do not apply to this section.

(c) *Prohibited species.* Unless otherwise specifically instructed by a U.S. observer or Authorized Officer, all billfish and all prohibited sharks must be released by cutting the line (or by other appropriate means) without removing the fish from the water.

(d) *Gear restrictions.* Foreign vessels participating in a directed fishery for sharks must use a minimum sized hook of 7 inches shank length and 2.5 inches gap (distance between tip and shank) when fishing inside the 100-fathom depth contour. There is no hook size restriction seaward of the 100-fathom depth contour.

(e) *Statistical reporting.* (1) In addition to the requirements of § 611.9, a vessel of a nation with an applicable allocation shall submit the following additional quarterly reports:

(i) Catch and effort data, summarized weekly by one degree squares, containing the following information:

(A) Number of hooks set.

(B) Number of sharks caught under allocation.

(C) Number of prohibited species (by species code from Appendix I to § 611.9) caught and released.

(D) Number of prohibited species (by species code) released alive.

(ii) Summary of vessel activities containing the following information:

(A) Permit number of each vessel fishing.

(B) For each successive day of the reporting period, the noon-day location (within 0.1 degree of latitude and longitude) of each vessel in the fishery.

(2) A vessel of a nation with no applicable allocation is exempt from the requirements of § 611.9 (d) and (e), but shall provide the reports required by § 611.9 (f) and (g), when applicable. In addition, a vessel of a nation with no applicable allocation shall submit the quarterly reports described in paragraph (e)(1)(i)(A), (C), and (D), only, and (e)(1)(ii) of this section.

(3) The quarterly reports required by paragraphs (e)(1) and (2) of this section shall be submitted not later than 60 days from the end of the quarter for which the report is being made, to: Director, Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149. Telephone: 305-361-5761.

§ 611.62 Royal red shrimp fishery.

(a) *Purpose.* This section regulates all foreign fishing conducted under a GIFA which involves the catching of royal red shrimp in the FCZ of the Gulf of Mexico.

(b) *Closed areas.* Fishing by foreign vessels for royal red shrimp is prohibited in depths less than 100 fathoms.

(c) *Gear restrictions.* No foreign vessel may use gear other than trawl gear to fish for royal red shrimp, except as specifically authorized in writing by the Regional Director.

Subpart E—Northeast Pacific Ocean

§ 611.70 Washington, Oregon, and California trawl fishery.

(a) *Purpose.* This subpart regulates all foreign fishing conducted under a Governing International Fishery Agreement in the fishery conservation zone seaward of Washington, Oregon, and California.

(b) *Authorized fishery*—(1) *TALFF*—(i) *Initial TALFF.* The total allowable level of foreign fishing (TALFF), the amounts of fish set aside as reserves, and the estimated domestic annual harvest (DAH) are set forth in Appendix 1 of 50 CFR 611.20.

(ii) *In-season increase to TALFF.* As soon as possible after August 1, the Northwest Regional Director of the National Marine Fisheries Service (Regional Director) shall apportion to TALFF all or part of the reserve and that portion of the estimated DAH which will not be harvested by U.S. fishermen during the rest of the fishing year. The Regional Director may withhold all or part of the Pacific whiting reserve and DAH based on the criteria in paragraph (b) (1) (ii) (A) of this section. Except as provided in paragraph (b)(2) of this section, incidental catch allowances for other species shall be based on the following maximum incidental catch rates expressed as a percentage of the Pacific whiting TALFF:

INCIDENTAL CATCH

Species	Percentage
Flounders	0.1
Jack mackerel	3.0
Rockfishes (excluding Pacific ocean perch)	0.738
Pacific ocean perch	0.062
Sablefish	0.173
Other species	0.5

(A) *Criteria.* The Regional Director may withhold from TALFF all or part of the Pacific whiting reserve and DAH if, as of July 1:

(*1*) All or part of the Pacific whiting reserve and DAH will be harvested by vessels of the United States during the rest of the fishing year, as determined by one or more of the following factors—

(*i*) Actual U.S. catch and effort compared to previous projections;

(ii) Projected U.S. catch and effort for the rest of the fishing year;

(*iii*) Projected processing of the U.S. harvest for the rest of the fishing year; or

(*2*) The spring Pacific whiting larvae assessment establishes that the total allowable catch (TAC) of whiting should be less than 175,000 m.t.

(B) *Procedure.* (*1*) *Publishing the proposal.* On or about July 1, the Regional Director shall publish in the FEDERAL REGISTER and disseminate to local media the amount of reserve and excess DAH, if any, proposed to be apportioned to TALFF.

(*2*) *Public comment.* Comments on the proposed action may be submitted to the Regional Director within 15 days after publication. Any relevant and timely comment filed under this section will be considered in making a final determination. The reports the Regional Director used to make the proposed determinations will be available for public inspection (consistent with 50 CFR 603 on Confidentiality of Statistics) during business hours, during the public comment period at the National Marine Fisheries Service, Northwest Regional Office, 1700 Westlake Avenue North, Seattle, WA 98109.

(*3*) *Promulgating the determination.* On or about August 1, but not less than 15 days after publication of the proposal, the Regional Director shall publish in the FEDERAL REGISTER and disseminate to local media the amount of the reserve and excess DAH apportioned to TALFF, the reasons for the determination, and responses to comments received.

(2) *In-season modifications to incidental catch percentages.* (i) The Regional Director may modify an incidental catch percentage for any species at any time. The Regional Director shall consider the following factors when modifying the incidental catch percentages set forth in paragraph (b)(1)(ii) of this section:

(A) Observed rates of incidental catches in previous foreign (or joint venture) operations;

(B) Current estimates of the relative abundance and availability of species caught incidentally in the whiting fishery;

(C) Ability of the U.S. fishery to attain JVP or of the foreign fishery to attain TALFF;

(D) Past and projected U.S. and foreign fishing effort;

(E) Status of the stock, so that an increased allowance will not contribute to declining stock status;

(F) Impact on domestic industry;

(G) Any other relevant scientific information.

(ii) *Procedure*—(A) *Publishing the proposal.* The Regional Director shall publish any proposed modification in the FEDERAL REGISTER and disseminate it to local media.

(B) *Public comment.* Comments on the proposed modification may be submitted to the Regional Director within 15 days after publication. Any relevant and timely comment filed under this section shall be considered. The reports the Regional Director used to propose a modification shall be available for public inspection (consistent with 50 CFR 603 on Confidentiality of Statistics) during business hours during the public comment period at the National Marine Fisheries Service, Northwest Regional Office, 1700 Westlake Avenue North, Seattle, WA 98109.

(C) *Promulgating the modification.* As soon as possible following the public comment period, the Regional Director shall publish in the FEDERAL REGISTER and disseminate to local media any modification to incidental catch percentages, the reasons for the determination, and responses to comments received.

(3) *Fishing permitted.* The catching the retention of any species for which a nation has an allocation is permitted, provided that:

(i) The vessels of that nation have not caught:

(A) The allocation of that nation for the directed fishery species; or

(B) The maximum allowable incidental catch of that nation for any species or species group (e.g., "other species"). When vessels of a foreign nation have caught a maximum incidental catch allowance, all further fishing (as defined in § 611.2(r)(1)) by vessels of that nation must cease, except as otherwise authorized by permit, even if the allocation of the directed fishery species has not been reached. Therefore, it is essential that a foreign nation plan its fishing strategy to ensure that an incidental catch allowance is not exceeded, thereby closing its directed fishery;

(ii) A directed fishery is not conducted for species or species groups except as authorized for Pacific whiting and as otherwise specifically authorized by permit; or

(iii) The fishery has not been closed for other reasons under § 611.15.

(c) *Open season.* Foreign fishing under this subpart is authorized from 0700 G.m.t. on June 1 and will terminate not later than 0800 G.m.t. on November 1, except as specified otherwise in a permit.

(d) *Open areas.* Except as prohibited in paragraph (e) of this section, foreign fishing under this subpart in permitted seaward of twelve nautical miles from the baseline used to measure the U.S. territorial sea between 39°00′ N. latitude and 47°30′ N. latitude, and as otherwise specifically authorized by permit.

(e) *Closed areas.* Foreign fishing is prohibited in the following areas except as otherwise specificially authorized by permit:

(1) "Columbia River Recreational Fishery Sanctuary"—that area between 46°00′ N. latitude and 47°00′ N. latitude and east of a line connecting the following coordinates in the order listed: 46°00′ N. latitude, 124°55′ W. longitude; 46°20′ N. latitude, 124°40′ W. longitude; and 47°00′ N. latitude, 125°20′ W. longitude.

(2) "Klamath River Pot Sanctuary"—that area between 41°20′ N. latitude and 41°37′ N. latitude and east of a line connecting the following coordinates in the order listed: 41°20′ N. latitude, 124°32′ W. longitude; and 41°37′ N. latitude, 124°34′ W. longitude.

(f) *Gear restrictions.* (1) Gear other than a pelagic trawl with a minimum mesh size of 100 mm, stretched inside measure when wet after use, is prohibited. No liners are permitted in the codend of the trawl. An outer protective mesh covering (chafing gear or outer bag) may be used if:

(i) The mesh size of the chafing gear is at least two times larger than the mesh size of the inner codend;

(ii) The thread size of the chafing gear is no greater than four times the diameter of that used in the inner codend;

(iii) The coded has four riblines (spaced equi-distant around the bag) running fore and aft longitudinally to which both the chafing gear and inner codend are lashed (sewed) knot-to-knot; and

(iv) The outer stretch mesh webbing is at least 10% longer than the ribline to which it is hung.

(2) Attaching any device to pelagic fishing gear or using any other means that would, in effect, make it possible to fish on the bottom is prohibited.

(3) Using any device or method which would have the effect of reducing mesh size of the codend is prohibited.

(g) *Statistical reporting.*—(1) *Daily fishing log (daily logbook).* The basis for all reports is a daily fishing log. This logbook shall be supplied by NMFS prior to entry into the fishery.

Daily catch data shall be recorded in duplicate. On-deck estimates of catch shall be made for each haul and logged before the next haul is on deck. The processed weight of each haul (factory weights) and discard weights shall be recorded accurately within 24 hours of each haul, and shall be accumulated for the fishing day (0001 G.m.t.—2400 G.m.t.) before the end of the next fishing day. The following information shall be included in the log:

(i) Date.

(ii) Times of commencement and completion of each set (when the net is at fishing depth).

(iii) Vessel's positions in degrees and minutes of latitude and longitude at the time of commencement and completion of each set (when the net is at fishing depth).

(iv) Bottom depth, averaged over length of tow.

(v) Depth of gear, averaged over length of tow.

(vi) Catch to the nearest tenth of a metric ton (0.1 m.t.) of Pacific whiting *in each haul.*

(vii) Catch to the nearest hundredth of a metric ton (0.01 m.t.) of the following species *in each haul:*

(A) Jack mackerel.

(B) Pacific Ocean perch.

(C) Rockfishes (excluding Pacific ocean perch).

(D) Sablefish.

(E) Flounders.

(F) Other species.

(viii) Catch, in numbers of fish, of the following prohibited species:

(A) Pacific halibut.

(B) Salmon.

(2) In addition to the requirements of § 611.9, the owner or operator of each foreign fishing vessel shall be responsible for maintaining catch and effort statistics and shall submit reports as follows to the Regional Director, Northwest Region (address: National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Washington 98109).

(i) *Daily report.* From the time the NMFS estimates that 90 percent of a nation's allocation of any species (directed or incidental) has been reached, and so notifies the designated representative of that nation, the information required under § 611.9(e) (Weekly Catch Report) shall be submitted on a daily basis and shall reach the Regional Director no later than three days after the reported fishing day.

(ii) *Annual report.* Each nation whose fishing vessels operate in the fishery shall report annual catch and effort statistics by May 31 of the following year in tabular form as follows:

(A) *Effort* in hours trawled, by vessel-class, by gear-type, by month, by ½° latitude by 1° longitude statistical areas.

(B) *Catch* by vessel-class, by gear-type, by month, by ½° latitude by 1° longitude statistical areas:

(*1*) To the nearest tenth of a metric ton (0.1 m.t.) for the following species or species groups: Pacific whiting, jack mackerel, Pacific ocean perch, rockfishes (excluding Pacific ocean perch) sablefish, flounders, and other species; and

(*2*) In numbers of fish for Pacific halibut and salmon.

(iii) *Daily logbook.* The logbook shall be available for inspection by the NMFS or U.S. Coast Guard personnel who at any time may remove the original copy. All original entries in the daily logbook (excluding those removed by the NMFS or U.S. Coast Guard personnel) shall be submitted to the Regional Director within three weeks after termination of a fishery. Duplicate copies shall be retained on the foreign vessel during the permit period or until all fishing or fish products produced under a permit for the Washington, Oregon, California FCZ are transferred, whichever is longer.

(iv) *Report of fish on board when entering fishery.* Before operating in this fishery, the owner or operator of each foreign vessel with fish on board shall report to the Regional Director the species and amounts of fish on board which were harvested in any other fishery. Such reports shall be submitted in accordance with the procedures specified in § 611.4(b). Any fish on board not so reported will be presumed to have been harvested in this fishery.

[46 FR 27486, May 20, 1981]

Subpart F—Western Pacific Ocean

§ 611.80 Seamount groundfish fishery.

(a) *Purpose.* This subpart regulates all foreign fishing for pelagic armorheads and alfonsins conducted under a Governing International Fishery Agreement in the fishery conservation zone of the western Pacific Ocean.

(b) *Authorized fishery*—(1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) TALFF, DAH, DAP, JVP, Reserve. The total allowable level of foreign fishing (TALFF), domestic annual harvest (DAH), joint venture processing (JVP), and reserve for seamount groundfish are listed in Appendix 1 to § 611.20. These specifications are valid for each calendar year unless amended.

(3) *Species definitions.* The category "other groundfish" used in TALFFs and in allocations includes all species of finfish caught incidental to directed fishing for pelagic armorheads and alfonsins except billfish, oceanic sharks, wahoo, and mahimahi, and other fish caught pursuant to § 611.81.

(4) *Open Season.* Foreign fishing authorized under this subpart may begin at 0800 G.m.t. on May 1 and will terminate not later than 0800 G.m.t. on October 1. This fishery may also be closed in accordance with § 611.15.

(c) *Prohibited species.* All Continental Shelf fishery resources, and all other species of fish except for alfonsins, armorheads and other groundfish, are prohibited species and shall be treated in accordance with § 611.13.

(d) *Open area.* Foreign vessels may engage in fishing for pelagic armorheads, alfonsins, and other groundfish only in those portions of the fishery conservation zone west of the 180° meridian and north of 28° N. latitude.

(e) *Gear restrictions.* No gear other than trawl or bottom longline gear may be used.

(f) *Collection, maintenance and, reporting of data.* In addition to the requirements of § 611.9, each foreign nation or foreign fishing vessel shall collect, maintain, or report on a timely basis, accurate data relating to fishing operations as specified in this section. All submissions required by this section shall be sent to the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 or, in the case of logbook data, hand delivered to the National Marine Fisheries Service observer on board the vessel upon his request. The following logs and reports are required:

(1) *Fishing log.* (i) Each fishing vessel which conducts trawling operations shall maintain and submit a fishing log which contains data for each haul as follows:

(A) Vessel name and permit number;

(B) Date;

(C) Codend mesh size to the nearest millimeter;

(D) Length of the footrope to the nearest tenth of a meter (0.1 m.) and average distance between footrope and headrope to the nearest tenth of a meter (0.1 m.);

(E) Time at the beginning of the haul and the total duration of the haul to the nearest five (5) minutes;

(F) Location at the midpoint of each haul to the nearest tenth (0.1) minute of latitude and longitude;

(G) Average depth of the seabottom to the nearest meter;

(H) Average fishing depth of the footrope to the nearest meter;

(I) Average fishing speed of the vessel (towing speed) to the nearest tenth of a knot (0.1 kt);

(J) Catch, by individual species, to the nearest tenth of a metric ton (0.1 m.t.); and

(K) Approximate weight (kilograms, by genus, of the incidental catch of the corals designated in § 611.2(h) of this part.

(ii) Each fishing vessel which conducts longlining operations shall maintain and submit a fishing log which contains data for each fishing day as follows:

(A) Vessel name and permit number;

(B) Date;

(C) Midday location of fishing, to the nearest tenth (0.1) minute of latitude and longitude;

(D) Average depth of hooks set, in meters;

(E) Number of hooks set and average soak time;

(F) Number of fish caught, by species, for pelagic armorhead, alfonsin, and other groundfish species.

(iii) If the fishing log is not delivered to a National Marine Fisheries Service observer on board the vessel, it shall be mailed to the Regional Director not later than 30 days following completion of fishing.

(2) *Annual report.* Each nation whose vessels engage in the seamount groundfish fishery shall submit by February 28 of the following year, annual catch and effort statistics as follows:

(i) Catch in metric tons by gear type by month by area to the nearest one-half degree (0.5°) latitude and by one degree (1°) longitude, by the following species groupings; pelagic armorhead, alfonsin, other groundfish;

(ii) Catch in kilograms of corals taken incidental to fishing operations by month by area to the nearest one-tenth degree (0.1°) latitude and longitude by the following species groupings: pink coral, gold coral, bamboo coral, other corals; and

(iii) Effort, in hours trawled or average number of hooks soaked per 24-hour period, by month by area to the nearest one-half degree (0.5°) latitude and one degree (1°) longitude.

(16 U.S.C. 1801 et seq.)

[43 FR 59293, Dec. 19, 1978, as amended at 44 FR 17184, Mar. 21, 1979; 44 FR 76541, Dec. 27, 1979; 45 FR 14587, Mar. 6, 1980; 46 FR 7386, Jan. 23, 1981]

§ 611.81 Pacific billfish, oceanic sharks, wahoo, and mahimahi fishery.

(a) *Purpose*—(1) *General.* This section regulates all foreign lingline fishing conducted under a Governing International Fishery Agreement which involves the catching of any species of billfish, oceanic shark, wahoo, or mahimahi (dolphin) in the fishery conservation zone (FCZ) of the United States in the Pacific Ocean, excluding the portion of the FCZ seaward of Alaska.

(2) *Species definitions.* For the purposes of this section, the following terms have the following meanings: (i) "Mahimahi" means "dolphin fish" (*Coryphaena hippurus* and *Coryphaena equisetis*); (ii) "oceanic sharks" means sharks of the families *Carcharhinidae, Alopiidae, Sphyrnidae,* and *Lamnidae;* (iii) "billfish" means broadbill swordfish (*Xiphias gladius*), blue marlin (*Makaira nigricans*), black marlin (*Makaira indica*), striped marlin (*Tetrapturus audax*), sailfish (*Istiophorus platypterus*), and shortbill spearfish (*Tetrapturus angustirostris*); and (iv) "wahoo" means fish of the species *Acanthocybium solanderi.*

(b) *Authorized fishery*—(1) *Regulatory areas.* For the purposes of this section, the FCZ of the Pacific Ocean (excluding the FCZ seaward of Alaska) is divided into five regulatory areas: West Coast, Guam and the Northern Mariana Islands, Hawaii and Midway Islands, American Samoa, and U.S. Possessions (Table 1).

(2) *Zones.* The regulatory areas are comprised of the following "billfish retention" and "billfish non-retention" zones (each zone is measured from the baseline used to measure the U.S. territorial sea):

TABLE I

Regulatory area	Billfish retention zones	Billfish nonretention zones
West Coast	Beyond 100 nautical miles	Betwen 12 and 100 nautical miles.
Guam and Northern Mariana Islands.	(1) Beyond 50 nautical miles from Guam, Rota, Tinian, Aguijan, and Saipan; and (2) beyond 12 nautical miles of the remaining islands of the Northern Mariana Islands.	Between 12 and 50 nautical miles from Guam, Rota, Tinian, Aguijan, and Saipan.
Hawaii and Midway Islands	(1) Beyond 100 nautical miles from the islands of Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau, and Oahu; and (2) beyond 50 nautical miles from the remaining islands of the State of Hawaii and Midway Islands.	(1) Between 12 and 100 nautical miles from the islands of Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau, and Oahu; and (2) between 12 and 50 nautical miles from the remaining islands of the State of Hawaii and Midway Islands.

TABLE I—Continued

Regulatory area	Billfish retention zones	Billfish nonretention zones
American Samoa	Beyond 12 nautical miles from American Samoa.	No nonretention zone.
U.S. Possessions	Beyond 12 nautical miles from any other possession of the United States in the Central and Western Pacific Ocean.	Do.

(3) *General.* Foreign vessels subject to this section are authorized to fish in the U.S. FCZ of the Pacific Ocean (excluding the FCZ seaward of Alaska) beyond 12 miles from the baseline used to measure the U.S. territorial sea, subject to the requirements of this section.

(i) *Non-retention fishery.* Except as provided in paragraph (b)(3)(ii) of this section, all billfish, oceanic sharks, wahoo, mahimahi, and other fish caught by foreign vessels in the course of fishing under this section shall be returned to the sea in accordance with the requirements of paragraph (c) of this section.

(ii) *Retention fishery.* Foreign vessels fishing subject to this section may retain billfish, oceanic sharks, wahoo, and mahimahi to the extent that retention is authorized by paragraphs (b)(4) and (5) of this section.

(4) *Total allowable level of foreign fishing (TALFF), joint venture processing (JVP), national allocations, and reserves*—(i) *TALFF and national allocations.* (A) The total amount of each species of billfish, oceanic sharks, wahoo, and mahimahi which may be caught and retained in each regulatory area by foreign vessels subject to this section is limited to the TALFF set out for each applicable regulatory area in Appendix I of § 611.20, and to the amount of the applicable national allocation.

(B) No foreign vessel subject to this section may catch and retain billfish within the billfish non-retention zones set out in Table I of paragraph (b)(2) of this section.

(ii) *Reserves*—(A) *Amounts.* The amounts of fish held in reserve are stated in Appendix I of § 611.20.

(B) *Determination.* (*1*) As soon as practicable after September 1 of each year, the Regional Director, Southwest Region, shall determine, for each species for which a reserve has been established, the amount of fish which has been harvested to date by U.S. vessels in each applicable regulatory area.

(*2*) If the Regional Director determines that the amount of fish of a species harvested by vessels of the United States in an area is less than 80 percent of the expected domestic harvest for that species in that area, the Regional Director shall apportion to TALFF the entire amount of the reserve for the applicable species in the applicable regulatory area. No reserve amounts shall be apportioned to TALFF if domestic vessels have harvested 80 percent or more of the expected domestic harvest for that species in the applicable area by the date of this determination.

(C) *Notice.* The Assistant Administrator for Fisheries, NOAA, shall publish in the FEDERAL REGISTER a notice of each determination made under paragraph (b)(4)(ii)(B) of this section.

(iii) Joint venture processing. The amounts of JVP are stated in Appendix I of § 611.20.

(5) *Cancellation of authority to retain.* (i) The authority of a foreign vessel to retain an applicable species is cancelled:

(A) When the national allocation for the applicable species is reached; or

(B) At the date and time specified in the notification issued by the Assistant Administrator under paragraph (b)(5)(ii) of this section.

(ii) The Assistant Administrator shall determine, on the basis of the information specified in § 611.15(b), when the TALFF or optimum yield (OY) for a billfish species, oceanic sharks, wahoo, or mahimahi in a regulatory area will be reached. At least forty-eight hours before the applicable TALFF or OY will be reached, the Assistant Administrator shall notify both the affected foreign nation(s) and the designated representative for any affected fishing vessel that authority to retain the applicable species is cancelled.

(iii) Any cancellation under this section shall remain in effect until a new or increased allocation becomes available.

(iv) The closure provisions of § 611.15 do not apply to foreign vessels fishing subject to this section.

(c) *Prohibited species*—(1) *General.* The following are prohibited species under this section:

(i) All species of fish over which the United States exercises exclusive fishery management authority and for which there is no national allocation;

(ii) All billfish, oceanic sharks, wahoo and mahimahi caught in excess of an applicable OY, TALFF, or national allocation; and

(iii) All billfish caught in a billfish non-retention zone. (See Table I of paragraph (b)(2) of this section.)

(2) *Treatment.* All prohibited species shall be treated in accordance with § 611.13.

(3) *Additional requirements for billfish and oceanic sharks.* Unless otherwise specifically instructed by a U.S. observer or authorized officer, all prohibited billfish and oceanic sharks must be released by cutting the line (or by other appropriate means) without removing the fish from the water.

(4) *Rebuttal of presumption.* Foreign vessels fishing subject to this section may rebut the presumption of § 611.13(c) by:

(i) Storing all prohibited species caught outside the FCZ in a separate part of the vessel hold which can be sealed, and arranging inspection and sealing of the vessel hold by U.S. authorities before commencing fishing in the FCZ or in billfish non-retention zones; or (ii) other reasonable means which may be authorized by the Administrator of the Western Pacific Program Office (WPPO) if, in consultation with the U.S. Coast Guard, the Administrator of WPPO, determines that special circumstances warrant alternative arrangements.

(5) *Procedure for hold sealing.* (i) Inspection and sealing of a foreign vessel's hold may be arranged by contacting the Administrator, WPPO (Southwest Region, National Marine Fisheries Service, Post Office Box 3830, Honolulu, Hawaii 96812, telephone: 808-946-2181) at least 48 hours in advance of the date for which inspection is requested.

(ii) Ports at which such inspections may be made are Honolulu and Kahului, Hawaii; Pago Pago, American Samoa; Agana, Guam; Saipan, Northern Mariana Islands; and San Diego, California.

(iii) Additional ports for hold inspections may be arranged with the Administrator, WPPO.

(6) *Other requirements.* The designation of ports for hold inspection and sealing does not modify any port entry arrangements or requirements (if any) of Governing International Fishery Agreements or the notification requirements of any other laws or regulations of the United States.

(d) *Vessel reporting.* (1) In lieu of the vessel reporting requirements of § 611.4, the owner or operator of each foreign fishing vessel engaging in the Pacific billfish, oceanic sharks, wahoo, and mahimahi fishery shall notify the Coast Guard in the manner set forth in paragraph (d)(3) of this section, of:

(i) The date of the Sunday beginning the week during which each vessel intends to *begin* fishing in the FCZ (action code BEGIN), the fishing area and the approximate longitude and latitude where it intends to begin fishing; (see paragraph (d)(5) of this section for use of action codes); and

(ii) The date of the Sunday beginning the week during which each vessel intends to *cease* fishing in the FCZ (action code CEASE) and the fishing area where it intends to cease fishing, with the approximate longitude and latitude.

(2) For purposes of this paragraph (d) of this section, a week shall begin at 0001 G.m.t. each Sunday. The fishing areas are listed in Appendix II to § 611.9.

(3) The vessel reports required by this paragraph (d):

(i) Shall be in English;

(ii) Shall be delivered via commercial facilities to the appropriate Coast Guard commander who will relay them to the appropriate National Marine Fisheries Service Region (see

Table I of § 611.4 for appropriate Coast Guard and National Marine Fisheries Service addresses);

(iii) Shall be delivered not later than seven days prior to the Sunday beginning the earliest week included in the report;

(iv) Need not be submitted on temporary departures from the FCZ, such as for port calls (inside the seaward boundary of one of the coastal states) or when operating at and occasionally outside the seaward limits of the FCZ; and

(v) Shall include departure from one fishing area and entry into another fishing area.

(4) Minor modifications in times reported in paragraph (d)(1) of this section, as necessitated by changing fishing conditions, weather, or vessel operating conditions, need not be reported. Major changes should be reported at the earliest practicable date. Examples of major changes include: Cancellation of a vessel's previously reported intentions to fish in a fishing area, and changes of more than two weeks in a previously reported time of arrival in, or departure from, a fishing area. The addition of an area to a vessel's fishing intentions requires the basic report of paragraph (d)(1) of this section.

(5) The vessel reports required by this paragraph (d) shall contain the following information: The message identifier "PACREP" to indicate it is a required vessel report in the Pacific billfish, oceanic sharks, wahoo, and mahimahi fishery; vessel name; international radio call sign; the date (month and day) of the Sunday on which the weekly period begins; the fishing area; the approximate longitude and latitude that it will enter and leave a fishing area; and the appropriate action code (BEGIN or CEASE).

(6) Vessel reports are required for each vessel. The vessel reports required by this paragraph (d) should be consolidated, if possible, and submitted for groups of vessels (on a vessel-by-vessel basis) by a designated representative for a foreign nation's fishing vessels. Illustrations of reports follow:

(i) Able Steamship Company, designated representative for Bolivian longliners, wishes to report the vessel *CABLE* (EXRC) which will begin fishing in the Hawaii and Midway Islands FCZ (area code 81) between February 10 and 16, 1980; cease fishing in that FCZ approximately February 26; begin fishing in the Johnston Atoll FCZ (area code 84) about February 28; cease fishing in the Johnston Atoll FCZ between March 2 and 8; begin fishing in the American Samoa FCZ (area code 83) about April 7; and cease fishing in the American Samoa FCZ about May 21. Able Steamship Company also wishes to report the vessel *DABBLE* (EQUP) which will begin fishing in the American Samoa FCZ on February 19 and cease fishing on March 18. He will then go to Howland and Baker Islands FCZ (area code 85) about March 23 and cease fishing on April 20. The required message must be delivered not later than February 3 to Commander, 14th Coast Guard District. The message would be transmitted as follows:

From: Able Steamship Company
To: Commander, 14th Coast Guard District, Honolulu, Hawaii (Telex: 392401); Southwest Region, NMFS, Terminal Island, CA
PACREP
CABLE/EXRC/0210/2710N/17920W/81/
BEGIN//0224/2210N/16005W/81/
CEASE//0224/1710N/17010W/84/
BEGIN//0302/1705N/17205W/84/
CEASE//0406/1510S/16510W/83/
BEGIN//0518/1435S/16640W/83/
CEASE//DABBLE/EQUP/0217/1405S/
16600W/83/BEGIN//0316/1650S/
16610W/83/CEASE//0323/0510S/
17800W/85/BEGIN//0420/0230N/
17930E/85/CEASE//

(ii) In the above illustration, Able Steamship Company subsequently learns that the vessel *Cable* ceased fishing in the Johnston Atoll FCZ on March 19 (a minor modification which need not be reported) and intends to cease fishing in the American Samoa FCZ about June 27 instead of May 21 (a modification which must be reported). Further, the vessel *Dabble* no longer intends to fish in the American Samoa FCZ (a modification which must be reported). The text of the message would appear as follows:

PACREP
CHANGE CABLE/EXRC/0518/1435S/
16640W/83/CEASE//to 0622/1435S/
16640W/83/CEASE//

CANCEL DABBLE/EQUP/0217/1405S/ 16600W/83/BEGIN//0316/1650S/ 16610W/83/CEASE//

(e) *Collection and Reporting of Data.* In lieu of the requirements of § 611.9 (d), (e), and (g), the following data collection and reporting requirements shall apply.

(1) *Daily cumulative catch log.* All foreign fishing vessels shall maintain a daily cumulative catch log in English. This log shall contain on a daily and cumulative basis data on all billfish, oceanic shark, wahoo, mahimahi, and other fish caught in the FCZ during the permit period. The log shall be maintained aboard the vessel during the duration of the permit period. Information for each fishing area shall be maintained on a separate page of the log. The log shall contain the following information:

(i) Name and call sign of the vessel;

(ii) Permit number;

(iii) Fishing area and area code number where fishing is conducted (see Appendix II to § 611.9);

(iv) Date;

(v) Noon-day position of vessel, within one-tenth of 1° longitude and latitude;

(vi) Number and round weight (in kilograms) of each species (by species codes) of billfish, oceanic sharks, wahoo, and mahimahi caught and retained each day and cumulatively;

(vii) Number of each species (by species codes) of billfish, oceanic shark, wahoo, mahimahi, and other fish caught and released each day and cumulatively;

(viii) Number of fish of each species released alive, each day and cumulative; and

(ix) Number of hooks set by type of bait.

(2) *Quarterly catch report.* Each foreign nation whose vessels fish under this section shall submit, through the designated representative, a quarterly report containing, on a vessel-by-vessel basis, the following information:

(i) Name of the vessel;

(ii) Permit number;

(iii) Month and day of the last day of the period covered by the report;

(iv) For each fishing area where fishing occurred during the reporting period:

(A) Number and round weight of each allocated species caught and retained to the nearest tenth of a metric ton (0.1 m.t.);

(B) Number of each species of billfish, oceanic shark, wahoo, mahimahi, and other fish caught and released during the reporting period;

(C) Number of fish of each species released alive;

(D) Total number of hooks set, by type and bait;

(E) Number of days fished in the FCZ during the reporting period; and

(F) Average number of hooks set per day fished, by type of bait.

(3) *Quarterly report of marine mammal incidental catch.* Each foreign nation whose vessels fish under this section shall submit, through the designated representative, the report of marine mammal incidental catch required by § 611.9(g) on a quarterly basis in lieu of weekly reports.

(4) *Submission of reports.* The quarterly reports required by this paragraph (e) shall be submitted within 60 days of the end of each calendar quarter to:

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, Telephone: 213-548-2575.

[45 FR 14585, Mar. 6, 1980, as amended at 46 FR 1739, Jan. 7, 1981]

Subpart G—North Pacific Ocean and Bering Sea

§ 611.90 General provisions.

(a) *Purpose.* This subpart regulates all foreign fishing conducted under a Governing International Fishery Agreement in the fishery conservation zone seaward of the State of Alaska.

(b) *Open season.* Except as otherwise specified in the following sections, fishing by foreign vessels may be conducted throughout the year. The specific times for opening and closing seasons and areas in this subpart shall be 0800 G.m.t. on the dates indicated. The fisheries regulated under this subpart may also be closed in accordance with § 611.15.

(c) *Fishing areas*—(1) *General.* Unless specifically authorized, no foreign vessel may engage in fishing within twelve nautical miles of the baseline used to measure the territorial sea.

(2) *Support operations.* Loading and other support operations by foreign vessels are permitted only in areas where the vessel being supported is authorized to fish, and in the following areas between three and twelve nautical miles from the baseline used to measure the territorial sea:

(i) Near Forrester Island, Alaska, bounded on the north by 54°54′ N. latitude, on the east by 133°16′ W. longitude, and on the south by 54°44′ N. latitude;

(ii) On the east side of Kayak Island Alaska, between 59°48′ N. latitude and 59°56′ N. latitude west of 143°53′ W. longitude, and on the west side by Kayak Island between 59°52′ N. latitude and 60°07′ N. latitude east of 145° W. longitude;

(iii) North of Tonki Cape on Afognak Island, Alaska, bounded on the north by 58°35′ N. latitude, on the south by 58°25′ N. latitude, on the west by 152°02′ W. longitude and on the east by 151°52′ W. longitude;

(iv) North and west of Sanak Island, Alaska, bounded on the north by 54°36′ N. latitude, on the south by 54°26′ N. latitude, on the west by 163°05′ W. longitude and on the east by 162°40′ W. longitude;

(v) On the south side of Unalaska Island, Alaska, between 167°18′ W. longitude and 167°40′ W. longitude (from January 1 to October 15, only);

(vi) On the north side of Unalaska Island, Alaska, between 167°15′ W. longitude and 167°35′ W. longitude (from January 1 to October 15, only);

(vii) On the south side of Umnak Island, Alaska, between 168°15′ W. longitude and 168°30′ W. longitude (from October 15 to January 1, only);

(viii) On the north side of Umnak Island, Alaska, between 168°25′ W. longitude and 168°40′ W. longitude and between 168°50′ W. longitude and 169°00′ W. longitude (from October 15 to January 1, only);

(ix) Off St. George Island of the Pribilof Islands, Alaska (from November 1 to May 1, only);

(x) On the north side of St. Matthew Island, Alaska, between 172°29′ W. longitude, and 172°46′ W. longitude, and on the south side of St. Matthew Island, between 172°17′ W. longitude, and 172°35′ W. longitude, and between 172°54′ W. longitude, and 173°04′ W. longitude.

(d) *Gear restriction.* No foreign vessel may possess crab pots in the FCZ while engaging in any fishery other than the Tanner crab fishery.

(e) *Statistical reporting.* (1) In addition to the requirements of § 611.9, the owner or operator of any foreign fishing vessel shall maintain catch and effort statistics as required by this subpart and shall report the information, through the designated representative, to the Director, Alaska Region, National Marine Fisheries Service, Juneau, Alaska, U.S.A. 99801.

(2) *Cumulative catch log, weekly catch report, and weekly report of marine mammal incidental catch.* The requirements of § 611.9(d) that each vessel maintain a daily cumulative catch log, of § 611.9(e) that the weekly catch report be on a vessel-by-vessel basis, and of § 611.9(g) that the weekly report of marine mammal incidental catch be on a vessel-by-vessel basis are waived for fishing vessels that are not equipped with processing facilities and deliver all catches to a factory ship, provided that a consolidated cumulative catch log is maintained by the factory ship which accounts for all such fish received, and provided that the required data for the fishing vessels are consolidated and reported by the factory ship in the manner specified in § 611.9(d), (e), and (g).

§ 611.91 Tanner crab fishery.

(a) *Purpose.* This section regulates foreign fishing for Tanner crab (all species of the genus Chionoecetes, including *C. bairdi, C. opilio,* and hybrids) in the Bering Sea.

(b) *Authorized fishery*—(1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) TALFF. The total allowable level of foreign fishing (TALFF) for Tanner crab is set forth in Appendix 1 to § 611.20.

(3) *Closures.* The taking of Tanner crab for which a nation has an allocation is permitted, provided that the

fishery has not been closed under § 611.15.

(4) *Directed fishery.* The Tanner crab fishery may be conducted only as a directed fishery. Notwithstanding the fact that there may be an applicable national allocation of Tanner crab and the fact that a vessel may be permitted in the Tanner crab fishery in addition to the snail fishery and/or the Bering Sea and Aleutian Islands fishery, Tanner crab caught while engaged in another fishery may not be retained.

(c) *Open areas.* Except for the closed areas set forth in paragraph (d) of this section, foreign fishing vessels may fish for Tanner crab in the entire Bering Sea.

(d) *Closed Areas.* No foreign vessel may engage in fishing for Tanner crab:

(1) Within twelve nautical miles of the baseline used to measure the U.S. territorial sea;

(2) South of 58°N. latitude; or

(3) East of 164°W. longitude.

(e) *Gear restrictions.* (1) No foreign vessel fishing for Tanner crab may use gear other than crab pots. A crab pot is defined as a portable structure designed and constructed to capture and retain crabs alive in the water.

(2) No foreign fishing vessel may possess crab pots in the FCZ while engaging in any other fishery.

(f) *Other Restrictions*—(1) *Non-retention.* No foreign vessel may retain:

(i) Any female of soft shell Tanner crab;

(ii) Any Tanner crab of the species *C. bairdi* caught south of 58°N latitude; or

(iii) Any species of crab other than the genus *Chionoecetes.* All crabs whose retention is prohibited by this paragraph (f)(1) shall be returned immediately to the sea in a manner which: (A) Minimizes handling mortality, and (B) is in accordance with § 611.13 of this part.

(2) *Processing.* No foreign fishing vessel operating with a factory ship may process Tanner crabs. All crabs taken by such vessels must be processed solely by a factory ship permitted in the Tanner crab fishery.

(3) *Loading and off-loading.* Tanner crabs must be taken aboard factory ships in a manner in which an observer can verify the total weight of crabs taken aboard. Tanner crabs off-loaded within the fishery conservation zone from fishing vessels not operating with a factory ship must be transferred in a manner in which an observer can verify the total weight of crabs off-loaded.

(4) *Pre-departure inspection.* No foreign vessel which engages in fishing, as defined in § 611.2(r)(1), in the Tanner crab fishery, other than a vessel operating with a factory ship, may depart the fishery conservation zone until its catch of crabs on board is inspected by an observer or an authorized officer. Fishing, as defined in § 611.2(r)(1), by such vessel after the pre-departure inspection is prohibited.

(5) *Fishing Location.* (i) A foreign processing vessel located south of 58°N latitude and west of 173°W longitude is prohibited from receiving from any foreign catcher vessel Tanner crab caught north of 58°N latitude.

(ii) A foreign processing vessel located north of 58°N latitude is prohibited from receiving from any foreign catcher vessel Tanner crab caught south of 58°N latitude.

(g) *Additional reports*—(1) *Daily report.* Each foreign vessel which engages in fishing, as defined in §611.2(r)(1), in the Tanner crab fishery, other than a vessel operating with a factory ship, shall report daily to the Regional Director, NMFS, Juneau, Alaska:

(i) The vessel's 12 noon (G.m.t.) position;

(ii) The vessel's catch for the preceding day by the following categories: *C. bairdi, C. opilio,* and hybrids; and

(iii) The vessel's cumulative catch.

(2) *Weekly catch report.* The weekly catch report required by § 611.9(e) shall be submitted to the Regional Director within 6 days following each 7-day period, and shall contain the following information in addition to that required by § 611.9(e):

(i) Effort in total pots lifted during the 7-day period, and

(ii) Catch during the 7-day period, in metric tons and number of crabs, by the following categories: *C. opilio, C. bairdi,* and hybrids.

(3) *Annual report.* Each nation whose vessels engage in this fishery shall report by May 30 of the following year annual catch and effort statistics as follows: *Effort* in number of pots hauled and hours pots soaked; *catch* in metric tons and the number of Tanner crabs by the following categories: *C. opilio, C. bairdi,* and hybrids. Each of these requirements is to be supplied by vessel class, by month, by 1/2° (lat.) by 1° (long.) statistical area.

[43 FR 59293, Dec. 19, 1978, as amended at 44 FR 15504, Mar. 14, 1979; 45 FR 72669, Nov. 3, 1980]

§ 611.92 Gulf of Alaska groundfish fishery.

(a) *Purpose and scope.* (1) This section regulates foreign fishing for groundfish in the fishery conservation zone of the Gulf of Alaska, which includes that portion of the North Pacific Ocean beyond three nautical miles from the baseline used to measure the U.S. territorial sea, exclusive of the Bering Sea, between 132°40′ W. longitude and 170°00′ W. longitude. The regulatory areas and districts of the Gulf of Alaska are in Figure 1.

(2) For regulations governing fishing for groundfish in the Gulf of Alaska by vessels of the United States, see 50 CFR Part 672.

(3) The specifications of total allowable levels of foreign fishing (TALFF's), Reserves, Domestic Annual Harvest (DAH), Joint Venture Processing (JVP), Optimum Yield (OY), and Domestic Non-Processing (DNP) in Appendix 1 to Section 611.20 are effective from November 1, 1980 through December 31, 1981, unless amended. After December 31, 1981, the specifications of TALFF's and Reserves shall continue on a calendar year basis at 12/14 of the levels specified for the period November 1, 1980 to December 31, 1981, unless amended.

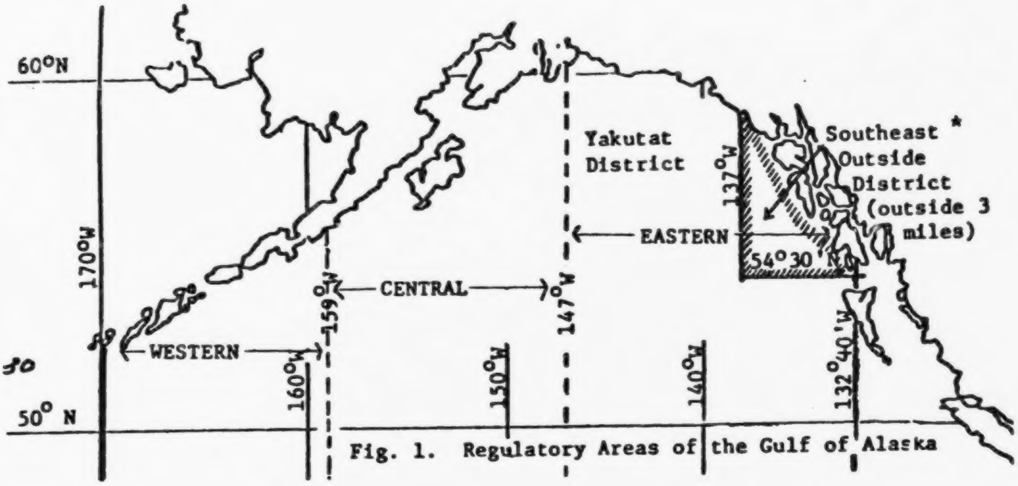


Fig. 1. Regulatory Areas of the Gulf of Alaska

* Southeast Inside District is not shown but is that area inshore from the Southeast Outside District, and is wholly within the territorial waters north of 54° 30' N. lat and east of 137° W. long.

(b) *Categories of Species.* Four categories of species are recognized for regulatory purposes in this fishery.

(1) "Unallocated species" include shrimps, scallops, snails, Pacific herring, Pacific halibut, salmonids, King

crab, Tanner crab, Dungeness crab, corals, surf clam, horsehair crab, and lyre crab. Except to the extent that their harvest is authorized under other regulations, the taking of these species must be avoided. When they are taken, they must be returned to the sea immediately, in accordance with 50 CFR 611.13. Taking of salmonids and halibut must be recorded and reported, in accordance with 50 CFR 611.9.

(2) "Target species" are the species that are commercially important and are generally targeted upon by the groundfish fishery. They include pollock, Pacific cod, flounders, Pacific Ocean perch, other rockfish, sablefish, Atka mackerel, squid, and thornyhead rockfish. Sufficient data on each species or species group exist for it to be managed separately from the others. Records of the catch of each target species or species group must be kept.

(3) "Other species" are species that currently have only slight economic value and are not generally targeted upon, but which are significant components of the ecosystem or have economic potential. These species include sculpins, sharks, skates, eulachon, smelts, capelin, and octopus. The optimum yield for these species as a category is set at 5 percent of the combined optimum yields of the target species. Records of the catch of other species must be kept.

(4) "Nonspecified species" include all fish other than those specifically listed in paragraphs (b)(1), (2), and (3) of this section. It is thus a residual category of species of no current or foreseeable economic value or ecological importance which are taken by the groundfish fishery as an accidental bycatch and are in no apparent danger of depletion. Nonspecified species may be either retained or discarded, and only records of the total amount retained, if any, must be kept.

These species categories and the species groups of which they are composed are set forth in Table I.

TABLE I.—CATEGORIES OF SPECIES INVOLVED IN THE GULF OF ALASKA GROUNDFISH FISHERY

Unallocated species [1]	Target species [2]	"Other" species [3]	Nonspecified species [4]
Salmonids, Halibut, Herring, King Crab, Tanner Crab, Coral, Shrimp, Clams, Horsehair Crab, Lyre Crab, Scallops, Snails, Dungeness Crab, and Surf Clams.	Pollock, Cod, Flounders, Atka Mackerel, Sablefish, Pacific Ocean Perch, Thornyhead Rockfish, Other Rockfish, and Squid.	Sculpins, Sharks, Skates, Eulachon, Smelts, Capelin, and Octopus.	All species not included in other three categories.

[1] Must be returned to the sea; records must be maintained as required by § 611.9.

[2] Commercially important; sufficient data base to allow management based on biological, social, economic and ecological characteristics; specific OY applies to each species; records must be maintained.

[3] Slight economic value, greater economic potential or important ecosystem component, but insufficient data to allow discrete species management; records must be maintained of the aggregate catches.

[4] No current economic value, may be discarded or retained, but if retained records must be maintained of the aggregate retained catches.

(c) *Authorized fishery*—(1) *OY's TALFF's and reserves.* (i) The specifications of optimum yield (OY), estimates of domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and TALFF's and Reserves are set forth in Appendix 1 to § 611.20. Species listed in paragraph (b)(1) and Table I of this section as "unallocated species," or species for which the TALFF listed in Appendix I to § 611.20 is zero, shall be treated as prohibited species in accordance with 50 CFR 611.13.

(ii)(A) *Apportionment of Reserves.* (*1*) As soon as practicable after the first day of the following months, and after consultation with the Council, the Regional Director may apportion to TALFF, in accordance with paragraph (c)(1)(ii)(C) of this section, all or part of the following amounts of each Reserve: April—40 percent; June—40 percent; August—20 percent. (*2*) As soon as practicable after the first day of the following months, and on such other dates as he determines necessary, the Regional Director may apportion to DAH, in accordance with paragraph (c)(1)(ii)(C) of this section, any amounts of any Reserve that he determines to be needed to supplement DAH: April, June, and August.

(B) *Apportionment of Initial DAH.* As soon as practicable after the first day of August, the Regional Director shall apportion to TALFF that part of the DAH which he determines will not be harvested by United States fishermen during the remainder of the year.

(C) *Standards and Procedure for Apportionment—(1) General.* The Regional Director shall apportion to TALFF under paragraphs (c)(1)(ii) (A) and (B) of this section only those amounts which he determines will not be harvested by vessels of the United States during the remainder of the fishing year. The amount of reserve which the Regional Director, determines will be harvested by vessels of the United States may, at the discretion of the Regional Director, either be apportioned to the estimate of DAH, or retained in the reserve as eligible for later apportionment under paragraph (c)(1)(ii) of this section.

(*2*) *Factors.* In determining whether or not amounts proposed to be apportioned under paragraphs (c)(1)(ii) (A) and (B) of this section will be harvested by vessels of the United States during the remainder of the fishing year, the Regional Director shall consider the following factors, although the Regional Director shall not be limited to these factors:

(*i*) Reported United States catch and effort by species and area compared to previously projected United States harvesting capacity;

(*ii*) Projected United States catch and effort by species and area for the remainder of the fishing year;

(*iii*) Amounts of fish, particularly United States harvested fish, already purchased or processed by United States fish processors during the fishing year, compared to previously projected processing capacity of U.S. processors;

(*iv*) Projected processing capacity, and utilization of that capacity for the processing of United States harvested fish, by United States fish processors for the remainder of the fishing year;

(*v*) Amounts of United States harvested fish already purchased or received by foreign fishing vessels, compared to previously projected levels of such purchase or receipt; and

(*vi*) The need to maintain orderly fisheries despite any misspecification of by-catch species amounts in mixed species fisheries.

(*3*) *Allocation of Increases and Decrease in DAH, Among DAP, JVP, and DNP.* The Regional Director shall allocate any increases or decreases in DAH amounts resulting from apportionments under paragraphs (c)(1)(ii) (A) and (B) of this section among the three components of DAH: the estimates of DAP; JVP; and DNP.

(*4*) *Public Comment.* (*i*) Comments may be submitted to the Regional Director concerning: whether, and the extent to which, vessels of the United States will harvest reserve or DAH amounts during the remainder of the fishing year; and whether, and the extent to which, United States harvested groundfish can or will be processed by United States fish processors or by foreign fishing vessels. Comments should be addressed to Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 99802, and must be received by the Regional Director no later than 15 days before the relevant date specified in paragraph (c)(1)(ii)(A) of this section. When the Regional Director determines that apportionment is required on dates other than those specified in paragraph (c)(1)(ii) (A) or (B), the Regional Director shall issue a FEDERAL REGISTER notice on the proposed apportionment. The notice shall state the period during which comments may be submitted.

(*ii*) The Regional Director shall consider any timely comments submitted in accordance with this paragraph in determining whether and to what extent vessels of the United States will harvest reserve or DAH amounts during the remainder of the fishing year, and whether any part of such amounts will be allocated to TALFF under paragraphs (c)(1)(ii) (A) and (B) of this section.

(*iii*) The Regional Director shall compile in aggregate form the most recent available reports on: level of catch and effort by vessels of United States fishing for groundfish taken in the Gulf of Alaska; and amounts of United States harvested groundfish taken in the Gulf of Alaska and processed by United States fish processors or delivered at sea to foreign fishing vessels. These data shall be available for public inspection during business hours (8:00 a.m.-4:30 p.m. Monday-Friday) at the National Marine Fisheries Service Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802, during the last 15 days of each comment period.

(5) *Procedure.* As soon as practicable after each of the dates specified in, and each additional apportionment date selected under paragraph (c)(1)(ii) (A) or (B) of this section, the Regional Director shall publish in the FEDERAL REGISTER:

(*i*) Reserve amounts to be apportioned to the TALFF or DAH; (*ii*) any DAH amounts to be apportioned to TALFF; (*iii*) the distribution of amounts apportioned to or from DAH among DAP, JVP, and DNP; (*iv*) the reasons for any apportionments and their distributions and (*v*) responses to any comments received.

(2) *Fishing permitted.* (i) The catching in the Gulf of Alaska and retention of the amount of any groundfish for which a nation has an allocation is permitted, except in the following circumstances:

(A) When vessels of a nation have caught the amount of the allocation of that nation for any groundfish species (or species group, e.g. "other rockfish") in any regulatory area, fishing for groundfish in that regulatory area by vessels of that nation is prohibited, even if (*1*) allocations of other species for that nation in that regulatory area have not been reached, or (*2*) the nation has not received a notice issued pursuant to § 611.15(c) prohibiting fishing by vessels of that nation in that regulatory area; or

(B) On the effective date of a notice of closure issued by the Regional Director pursuant to the procedures of § 611.15(c), fishing by vessels of that nation is prohibited for the groundfish species (or species groups), in the regulatory areas and during the periods stated in the notice; or

(C) As otherwise prohibited by this section.

(D) The provisions of paragraph (c)(2)(i)(A) of this section do not apply to foreign vessels fishing with longline gear unless the allocation reached is for Pacific cod or sablefish. However, when the area allocation of any groundfish species, or species group other than Pacific cod, or sablefish is reached, any subsequent catch of that species in that area by vessels fishing with longline gear shall be considered catch of a "prohibited species" and treated in accordance with the provisions of § 611.13. Catches of those species or species group in the target and other species categories that become prohibited species must be recorded and reported as required by 50 CFR 611.9.

(E) A notice of closure issued pursuant to paragraph (c)(2) of this section shall not apply to any receipt or processing by foreign vessels of United States harvested fish authorized by a permit issued by the Department of Commerce under the Act. Receipt of U.S. harvested fish and the condct of other operations in support of U.S. vessels by foreign fishing vessels in the management area may continue until specifically prohibited under the procedures prescribed in the applicable permit.

(ii) Each year, the Regional Director shall issue a notice of closure pursuant to the procedures of § 611.15(c), prohibiting fishing with specified gear types for any groundfish species, species group, or species category in the applicable regulatory area or district by vessels subject to this section, when the Regional Director determines that one or more of the following catch limitations will be reached:

(A) OY for any groundfish species, species group, or species category, in a regulatory area or district: the Regional Director shall issue a notice prohibiting, through December 31, fishing using trawl gear for groundfish in that regulatory area or district by vessels subject to this section, except that if the optimum yield for sablefish or Pacific cod in a regulatory area or district will be reached, the Regional Director shall prohibit fishing for groundfish in that regulatory area or district by all vessels subject to this section through December 31;

(B) TALFF for any groundfish species, species group, or species category, in a regulatory area or district: the Regional Director shall issue a notice prohibiting through December 31 fishing using trawl gear for groundfish in that regulatory area or district, except that if the TALFF for sablefish or Pacific cod in a regulatory area or district will be reached, the Regional Director shall prohibit fishing for groundfish in that regulatory area or district by all vessels subject to this section.

(C) The allocation of a nation for any groundfish species, species group, or species category in a regulatory area or district: the Regional Director shall issue a notice prohibiting through December 31 in that regulatory area or district, fishing using trawl gear for groundfish by vessels of that nation; and retention of that species, species group, or species category by vessels of that nation using longline gear. However, if a national allocation for sablefish or Pacific cod in a regulatory area or district will be reached, the Regional Director shall prohibit fishing for groundfish in that regulatory area or district by all vessels of that nation through December 31.

(iii) When a notice has been issued pursuant to this subsection prohibiting fishing, vessels of a nation subject to this section may resume fishing in a regulatory area or district: (A) on the effective date of a notice issued pursuant to § 611.15(c) rescinding the notice of closure previously issued; or (B) when the time period stated in the notice of closure expires.

(d) *Open areas.* (1) Except as prohibited in paragraph (e) of this section, foreign fishing for groundfish is permitted in the Gulf of Alaska beyond twelve nautical miles from the baseline used to measure the U.S. territorial sea, and between three and twelve nautical miles from the base line used to measure the U.S. territorial sea between 169°00′ and 170°00′ W longitude.

(2) In addition to the areas in which foreign fishing is permitted under paragraphs (d) and (e) of this section, foreign vessels holding Department of Commerce permits to receive United States harvested fish at sea may also receive only United States harvested fish and conduct other operations in support of U.S. vessels in areas where foreign fishing is prohibited if: (i) that area is beyond three nautical miles from the baseline used to measure the U.S. territorial sea; (ii) receipt of the U.S. harvested fish or conduct of such support operations by the foreign vessel is in an area and during a time when fishing by U.S. vessels being supported is permitted under 50 CFR Part 672; and (iii) receipt by the foreign vessel or conduct of such support operation in that area is not prohibited by the terms and conditions of that vessel's permit to receive U.S. harvested fish.

(e) *Closed areas*—(1) *All fishing.* Foreign fishing for groundfish is prohibited in the following portions of the management area:

(i) *Cape Edgecumbe-Salisbury Sound:* between 56°53′ N. latitude and 57°24′ N. latitude east of 137°00′ W. latitude.

(ii) *Cross Sound Gully:* between 57°50′ N. latitude and 58°12′ N. latitude east of 137°25′ W. longitude.

(iii) *Fairweather Gully:* the area bounded by rhumb lines connecting the following coordinates in the order listed:

North latitude	West longitude
58°28′	140°00′
58°48′	138°50′
58°10′	139°11′
58°28′	140°00′

(iv) *"Davidson Bank":* between 163°04′ W. longitude and 166°00′ W. longitude north of 53°00′ N. latitude.

(2) *Fishing with trawl gear.* Trawling for groundfish by vessels subject to this section is prohibited in the following areas during the periods specified:

(i) 140° W. longitude to 147° W. longitude, from November 1 to February 16.

(ii) 147° W. longitude to 157° W. longitude from February 16 to June 1.

(iii) Six *"Kodiak gear areas,"* from August 10 to June 1. These areas, bounded respectively by rhumb lines connecting in each of the following groups the coordinates in the order listed, are described as follows:

(C) North latitude	West longitude
57°15′	154°51′
56°57′	154°34′
56°21′	155°40′
56°26′	155°55′
57°15′	154°51′
(B)	
56°27′	154°06′
55°46′	155°27′
55°40′	155°17′
55°48′	155°00′
55°54′	154°55′
56°03′	154°36′
56°03′	153°45′
56°30′	153°45′
56°30′	153°49′
56°27′	154°06′
(C)	
56°30′	153°49′
56°30′	153°00′
56°44′	153°00′
56°57′	153°15′
56°45′	153°45′
56°30′	153°49′
(D)	
57°05′	152°52′
56°54′	152°52′
56°46′	152°37′
56°46′	152°20′
57°19′	152°20′
57°05′	152°52′
(E)	
57°35′	152°03′
57°11′	151°14′
57°19′	150°57′
57°48′	152°00′
57°35′	152°03′
(F)	
58°00′	152°00′
58°00′	150°00′
58°12′	150°00′
58°19′	151°29′
58°00′	152°00′

(iv) *Three "Kodiak halibut areas,"* from 5 days before until 5 days after the first opening of the U.S. halibut fishing season, if the first opening of that fishing season occurs after May 26 (as established by regulations of the International Pacific Halibut Commission).

(A) The three "Kodiak halibut areas", bounded respectively by rhumb lines, are described as follows:

(*1*) 58°30′ N. lat. to 59°30′ N. lat., between 147°40′ W. long. and 150°20′ W. long.

(*2*) 57°40′ N. lat. to 58°05′ N. lat., between 148°50′ W. long. and 150°30′ W. long.

(*3*) 55°30′ N. lat. to 56°25′ N. lat., between 155°45′ W. long. and 156°30′ W. long.

(B) The Regional Director shall give notification of the first opening date of the U.S. halibut fishing season to the designated representative of each foreign nation at least 7 days before the U.S. halibut fishing season first opens.

(3) *Fishing with longline gear*—(i) *General.* Longline fishing for groundfish by vessels subject to this section is prohibited east of 140° W. longitude at all times. For the purpose of this § 611.92, longline means a stationary, buoyed and anchored line with hooks or pots attached, or the taking of fish by means of such a device.

(ii) *Longline fishing for sablefish.* Longline fishing for sablefish by vessels subject to this section between 140° and 169° W. longitude is prohibited: (A) Landward of the 400 meter depth contour, from 0800 GMT May 1 to 0800 October 1; and (B) landward of the 500 meter depth contour, from 0800 GMT October 1 to 0800 GMT May 1.

(iii) *Longline fishing for Pacific cod.* Longline fishing for Pacific cod by vessels subject to this section between 140° and 169° W. longitude is prohibited landward of the 400 meter depth contour during the halibut fishing seasons as established by regulations of the International Pacific Halibut Commission. The Regional Director shall give notification of the opening and closing dates of the U.S. halibut fishing seasons to the designated representative of each foreign nation, at least 7 days before the opening and closing dates of the U.S. halibut fishing seasons.

(f) *Gear restrictions*—(1) *Vessels using trawl gear.* During the period from December 1 to June 1, vessels subject to this section shall not use trawls other than pelagic trawls (trawls in which neither the net nor the otter boards operate in contact with the seabed) equipped with recording net-sonde devices functioning properly during each tow.

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(i) The footrope of the net shall not be in contact with the seabed for more than 10 percent of any tow, as indicated by the net-sonde readout.

(ii) Vessels subject to this section shall not attach to a pelagic trawl any protective device (such as chafing gear, rollers or bobbins) which would make it possible to fish on the seabed.

(2) *Vessels using longline gear.* Vessels subject to this section shall not use gear other than longline gear when conducting a directed fishery for:

(i) Sablefish; or

(ii) Pacific cod in the area which is both west of 157° west longitude and landward of the 500 meter depth contour.

(g) *Additional statistical report—Annual.* In addition to the requirements of § 611.9, each nation whose fishing vessels fish subject to this section shall submit a written annual report to the Regional Director setting forth catch and effort statistics regarding fishing activities conducted under this section during the annual period from January 1 through December 31 by May 31 of the following year. A two-month report will be required by May 31, 1981, for the period November 1 through December 31, 1980.

(1) Foreign vessels fishing with trawl gear shall report:

(i) *Effort* in hours trawled and number of days fished, by vessels class, by gear type, by month, by 1.2° (lat.) x 1° (long.) fishing area;

(ii) *Catch* in metric tons, by vessel class by gear type, by month, by ½° (lat.) x 1° (long.) fishing area, by the following species categories: yellowfin sole, rock sole, flathead sole, arrowtooth flounder, other flounders, Pacific ocean perch, other rockfish, thorneyhead rockfish, Pacific cod, sablefish (blackcod), walleye (Alaska) pollock, Atka Mackerel, squid, any other species taken in excess of 1,000 metric tons, and other fishes.

(2) Foreign fishing vessels fishing with longline gear shall report:

(i) *Effort* in number of longline units (300 fathoms of longline or groundline per unit) and number of hooks per unit, number of pots, duration of soaking time for longlines and pots, and number of days fished, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) fishing area; and

(ii) *Catch* in metric tons, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) fishing area, by the species categories listed in paragraph (g)(1)(ii) of this section.

[46 FR 73494, Nov. 5, 1980]

§ 611.93 Bering Sea and Aleutian Islands Groundfish Fishery.

(a) *Purpose.* (1) This section regulates foreign fishing for squid, octopus, and all species of finfishes except salmon, Pacific halibut, steelhead and herring within that portion of the Bering Sea, and that portion of the North Pacific Ocean adjacent to the Aleutian Islands west of 170° W. longitude, over which the United States exercise exclusive fishery management authority (hereafter referred to in this section as the "management area").

(2) Regulations governing foreign fishing for Tanner crab, snails and herring are set forth in 50 CFR 611.91, 611.94 and 611.95 respectively. Although § 611.95 regulates herring fishing, it is the intention of these regulations that foreign trawl vessels fishing under § 611.93 for groundfish in the Bering Sea management area cease fishing when the herring OY, TALFF or national allocation is reached. For purposes of clarity, this requirement is included in § 611.93.

(b) *Authorized fishery*—(1) *Foreign fishing.* Foreign fishing in the management area for species regulated by this section is prohibited except as authorized by this section.

(2) *OY's TALFF's and Reserves.* (i) The amounts of fish specified as the optimum yields (OY's), initial estimates of joint venture processing (JVP), total allowable levels of foreign fishing (TALFF's) and reserves are stated in Part 4 A, Appendix I of § 611.20.

(ii) The specifications in Part 4 A, Appendix I are effective from January 1 through December 31.

(iii) *Species definitions.* (A) The term "unallocated species" means for purposes of this section (and Part 4 A, Appendix I of § 611.20) the following: shrimps (*Pandalidae*); scallops (*Pec-*

tinidae); snails (*Gastropoda*); Pacific herring (*Clupea harengus pallas*); salmonids (*Salmonidae*); Pacific halibut (*Hippoglossus stenolepis*); king crab (*Paralithodes spp.*); Tanner crab (*Chionoecetes opilio, C. Bairdi*); Dungeness crab (*Cancer magister*); corals (*Coelenterata*); surf clam (*Spisula solidissima*); Horsehair crab (*Erimacrus isenbeckii*); and lyre crab (*Hyas lyratus*). Foreign allocations for these species exist, if at all, only under other fishery management plans.

(B) The term "other species" includes for the purposes of this section (and Part 4 A, Appendix I of § 611.20) the following: sculpins, sharks, skates, eulachon, smelts, capelin, octopus and all other finfishes and marine invertebrates except those listed in Part 4 A, Appendix I and unallocated species.

(3) *Apportionment to TALFF of Reserves and Initial DAH*—(i) *Apportionment of Reserves.* As soon as practicable after each of the following dates, and on such other dates as he determines necessary, the Regional Director shall apportion to TALFF and/or DAH any portion of the Reserve set forth in Part 4A of Appendix I to § 611.20 that he determines to be appropriate, in accordance with paragraph (b)(3)(iii) of this section: February 2, April 2, June 2, and August 2.

(ii) *Apportionment of Initial DAH.* As soon as practicable after each of the following dates, and after consultation with the North Pacific Fishery Management Council, the Regional Director shall reassess each DAH amount set forth in Part 4 A, Appendix I of § 611.20, and apportion to TALFF such parts thereof as he determines to be appropriate in accordance with paragraph (b)(3)(iii) of this section: June 2 and August 2.

(iii) *Standards and Procedure for Apportionment*—(*A*) *General.* The Regional Director shall apportion under paragraphs (b)(3)(i) and (b)(3)(ii) of this section such reserve amounts as he determines will not be harvested by vessels of the United States during the remainder of the fishing year. The amount of reserve which the Regional Director determines will be harvested by vessels of the United States may, in the discretion of the Regional Director, be either apportioned to the estimate of domestic annual harvest (DAH) or retained in the reserve as eligible for later apportionment under paragraph (b)(3)(iii)(F) of this section.

(B) *Factors.* In determining whether or not amounts proposed to be apportioned under paragraphs (b)(3)(i) and (b)(3)(ii) of this section will be harvested by vessels of the United States during the remainder of the fishing year, the Regional Director shall consider the following factors, although he shall not be limited to these factors:

(*1*) Reported United States catch and effort by species and area compared to previously projected United States harvesting capacity;

(*2*) Projected United States catch and effort by species and area for the remainder of the fishing year;

(*3*) Amounts of fish, particularly United States harvested fish, already purchased or processed by United States fish processors during the fishing year, compared to previously projected processing capacity of United States fish processors;

(*4*) Projected processing capacity, and utilization of that capacity for the processing of United States harvested fish, by United States fish processors for the remainder of the fishing year;

(*5*) Amounts of United States harvested fish already purchased or processed by foreign fishing vessels, compared to previously projected levels of such purchase or processing.

(C) *Allocation of increases and decreases in DAH among DAP, JVP,* and *DNP.* The Regional Director shall allocate any increases or decreases in DAH amounts resulting from apportionments under paragraphs (b)(3)(i) and (b)(3)(ii) of this section among the three components of DAH: the estimates of domestic annual processing (DAP); joint venture processing (JVP); and domestic non-processed fish (DNP.)

(D) *Public comment.* (*1*) Comments may be submitted to the Regional Director concerning:

(*i*) Whether and the extent to which vessels of the United States will harvest reserve or DAH amounts during the remainder of the fishing year; and

(*ii*) Whether and the extent to which United States harvested groundfish can or will be processed by United States fish processors or by foreign processing vessels.

Comments should be addressed to Director, Alaska Region, NMFS, P. O. Box 1668, Juneau, Alaska 99802, and must be received by the Regional Director no later than 5 days before the relevant date specified in paragraph (b)(3)(i) or (b)(3)(ii) of this section (i.e., January 28, March 28, May 28 and July 28). When the Regional Director determines that apportionment is required on dates other than those specified in paragraph (b)(3)(i) of this section, he shall issue a FEDERAL REGISTER notice on the proposed apportionment which shall state the terms upon which interested persons will be authorized to submit comments on the apportionment to the NMFS Alaska Regional Director.

(*2*) The Regional Director shall consider any timely comments submitted in accordance with this paragraph in determining whether and to what extent vessels of the United States will harvest reserve or DAH amounts during the remainder of the fishing year, and whether any part of such amounts will be allocated to TALFF under paragraphs (b)(3)(i) and (b)(3)(ii) of this section.

(*3*) The Regional Director shall compile, in aggregate form, the most recent available reports on (*i*) level of catch and effort by vessels of the United States fishing for groundfish in the Bering Sea and Aleutian Islands fishery; and (*ii*) amounts of United States harvested groundfish taken in the Bering Sea and Aleutian Islands fishery and processed by United States fish processors or delivered at sea to foreign fishing vessels. These data shall be available for public inspection during business hours (8:00 a.m.-4:30 p.m., Monday-Friday) at the National Marine Fisheries Service Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802, during the last 15 days of each comment period.

(E) *Procedure.* As soon as practicable after each of the dates specified in paragraphs (b)(3)(i) and (b)(3)(ii) of this section, the Regional Director shall publish in the FEDERAL REGISTER:

(*1*) Any reserve amounts to be apportioned to TALFF or DAH;

(*2*) Any DAH amounts to be apportioned to TALFF;

(*3*) The distribution of amounts apportioned to or from DAH among DAP, JVP, and DNP;

(*4*) The reasons for any apportionments and their distribution; and

(*5*) Responses to any comments received.

(F) *Add-on.* If, following any of the four dates specified in paragraph (b)(3)(i) of this section, the Regional Director apportions less than 25 percent of any reserve amount to TALFF and DAH, the nonapportioned part of that 25 percent shall be added to the reserve amounts available for apportionment on the next data specified in paragraph (b)(3)(i) of this section.

(4) *Fishing Permitted.* (i) The catching in the management area and retention of the amount of any groundfish species or species group for which a nation has an allocation is permitted, except as provided in this section.

(ii) The Regional Director shall issue a notice of closure, pursuant to the Procedures of § 611.15(c), prohibiting fishing with specified gear types for any groundfish species or species group in the management area or the appropriate portion thereof when he determines that one or more of the following catch limitations will be reached:

(A) Optimum yield (OY) for the groundfish species or species group or for herring. The Regional Director shall issue a notice prohibiting fishing using trawl gear for groundfish in the management area or portion thereof by vessels subject to this section, until January 1 *except* that if the optimum yield for sablefish, turbots, Pacific cod or "other species" will be reached, the Regional Director shall prohibit fishing for groundfish in that management area or portion thereof by all vessels subject to this section until January 1;

(B) Total allowable level of foreign fishing (TALFF) for any groundfish species or species group or for herring: The Regional Director shall issue a notice prohibiting fishing using trawl gear for groundfish in the management area or portion thereof, except that if the TALFF for sablefish, Pacific cod, turbots or "other species" will be reached, the Regional Director shall prohibit fishing for groundfish in that management area or portion thereof by all vessels subject to this section.

(C) The allocation of a nation for any groundfish species, or species group or for herring: The Regional Director shall issue a notice prohibiting fishing using trawl gear for groundfish in the management area or portion thereof, except that if the allocation of sablefish, Pacific cod, turbots, or "other species" will be reached, the Regional Director shall prohibit fishing for groundfish in that management area or portion thereof by all vessels of that nation.

(iii) On the effective date of a notice of closure issued by the Regional Director pursuant to the procedures of § 611.15(c), fishing by vessels of that nation is prohibited for the groundfish species or species groups, in the areas and during the periods stated in the notice. A notice of closure issued pursuant to paragraph (b)(4) of this section shall not apply to any receipt or processing by foreign vessels of United States harvested fish which is authorized by permit issued by the Department of Commerce under the Act. Foreign receipt and processing of U.S. harvested fish may continue until specifically prohibited under the procedures prescribed in the applicable permit.

(iv) A notice issued pursuant to this paragraph shall expire (A) on the effective date of a notice issued pursuant to § 611.15(c) rescinding that previous notice; or (B) when the time period stated in that notice expires.

(5) *Fishing prohibited.* Whether or not a nation receives a notice issued under paragraph (b)(4) of this section, fishing for groundfish by trawl vessels of a nation is prohibited when that nation's national allocation for any groundfish species or species group or for herring is reached; and fishing for groundfish by all vessels of a nation is prohibited when that nation's national allocation for sablefish, Pacific cod, turbots or "other species" is reached.

(c) *Open Areas.* Except for the closed areas set forth in paragraph (d) of this section, foreign fishing is permitted at all times throughout that portion of the management area beyond 12 miles from the baseline used to measure the territorial sea.

(d) *Closed Areas*—(1) *3-12 Miles.* Foreign fishing for groundfish is prohibited in that portion of the management area between three and twelve nautical miles from the baseline used to measure the territorial sea, with the following exceptions:

(i) Foreign fishing vessels holding permits to receive United States harvested fish may receive, to the extent authorized by the applicable permit, only United States harvested fish in the management area between 3 and 12 nautical miles from the baseline from which the United States territorial sea is measured: the receipt of foreign-caught fish by foreign vessels is prohibited unless receipt takes place in an area and during a period when foreign fishing is permitted;

(ii) Fishing in the area between 169° and 170° W. longitude and north of the Aleutian Island chain is permitted at all times by longline vessels, and from June 1 to December 1 by trawl vessels;

(iii) Fishing in the area between 170° and 172° W. longitude is permitted at all times;

(iv) Fishing in the area between 172° and 176° W. longitude is permitted from April 1 to November 1 by longline vessels;

(v) Fishing in the area west of 176° W. longitude and north of the Aleutian Island chain is permitted at all times by longline vessels and from May 1 to January 1 by trawl vessels;

(vi) Fishing in the area between 176° 00′ and 178° 30′ W. longitude and south of the Aleutian Island chain is permitted from April 1 to November 1 by longline vessels, and from July 1 to November 1 by trawl vessels; and

(vii) Fishing in the area west of 178° 30′ W. longitude and south of the Aleutian Island chain is permitted at all times by longline vessels, and from May 1 to January 1 for trawl vessels.

(2) *Trawling.* Trawling by foreign vessels is prohibited in the areas and during the periods which follow:

(i) At all times in the Bristol Bay "Pot Sanctuary" which is the area enclosed by straight lines from Cape Sarichef light at 54°36′ N. lat., 164°55′42″ W. long.; to 55°16′ N. lat., 166°10′ W. long.; to 56°20′ N. lat. 163°00′ W. long.; to 57°10′ N. lat., 163°00′ W. long.; to 58°10′ N. lat., 160°00′ W. long.; then due south along 160°00′ W. long. to the Alaska Peninsula.

(ii) From December 1 to June 1, in the following two areas:

(A) The area bounded by straight lines connecting the following coordinates in the order listed: 54°36′ N. lat., 164°54′42″ W. long. (Cape Sarichef light); 52°48′ N. lat., 170°00′ W. long.; 55°30′ N. lat., 170°00′ W. long.; 55°30′ N. lat., 166°47′ W. long.; 56°00′ N. lat., 167°45′ W. long.; 56°00′ N. lat., 166°00′ W. long.; 56°30′ N. lat., 166°00′ W. long.; 56°30′ N. lat., 163°00′ W. long.; 56°20′ N. lat., 163°00′ W. long.; 55°16′ N. lat., 166°10′ W. long.; 54°36′ N. lat., 164°55′42″ W. long. (Cape Sarichef light).

(B) The area bounded by straight lines connecting the following coordinates in the order listed: 56°18′ N. lat., 170°24′ W. long.; 56°20′ N. lat., 169°03′ W. long.; 56°12′ N. lat., 168°46′ W. long.; 55°56′ N. lat., 169°10′ W. long.; 55°56′ N. lat., 170°24′ W. long.; 56°18′ N. lat., 170°24′ W. long.

(e) *Additional Reporting Requirements*—(1) *Vessel Reporting.* During the period from September 1 through April 30, and for the purposes of the requirements of 50 CFR 611.4 only, the area bounded by the following coordinates is a "fishing area" (in addition to the fishing areas described in § 611.9, Appendix II, Figure 2) for all foreign trawl vessels fishing for groundfish under this § 611.93:

58° N. lat., 175° W. long.;
58° N. lat., 172° W. long.;
59°30′ N. lat., 172° W. long.;
59°30′ N. lat., 175° W. long.

(2) *Reports and Recordkeeping*—(i) In addition to the requirements of 50 CFR 611.9, the operator of each foreign fishing vessel, and each nation whose vessels fish under this § 611.93 shall also comply with all the requirements of § 611.9 for the prohibited species herring (code 209), even though discarded, by weight of herring to the nearest ⅒ (tenth) of a metric ton.

(ii) (A) During the period September 1 through April 30, and in addition to the requirements of § 611.9, each foreign nation shall submit, through the designated representative, a weekly report stating any catch of herring by trawl vessels in the area described in paragraph (e)(1) of this section.

(B) The weekly report shall contain the following information:

(*1*) Name of vessel;

(*2*) Permit number;

(*3*) Effort in hours trawled, by each weekly reporting period, by vessel, by ½° (latitude) x 1° (longitude) of area fished;

(*4*) Catch of herring (code 209) to the nearest ⅒ (one-tenth) of a metric ton, by vessel, by each weekly reporting period, by ½° (latitude) x 1° (longtitude) of area fished.

(C) The weekly report shall be received from the designated representative by the Director, Alaska Region (National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99801, Telex No. 009945-377), at the times specified in § 611.9, Appendix IV D, and in the format specified by the Director, Alaska Region.

(3) *Annual Report.* Each nation whose vessels fish for groundfish in the management area shall report by May 30 of the following year, annual catch and effort statistics as follows:

(i) Effort in hours trawled, number of longline units (300 fathoms of longline or groundline per unit) and number of hooks per unit, number of pots, duration of soaking time for longlines and pots, and number of days fished, by vessel class, by gear type, by month, by ½° (latitude) x 1° (longitude) fishing area; and

(ii) Catch in metric tons, by vessel class, by gear type, by month, by ½° (latitude) x 1° (longitude) fishing area, by the following species categories: Yellowfin sole; rock sole; flathead sole; arrowtooth flounder; greenland turbot; other flounders; Pacific Ocean perch; Pacific cod, sablefish (blackcod); walleye (Alaska) pollock; Atka mackerel; squid; "other rockfish"; any other species taken in excess of 1,000 metric tons; and "other species."

(16 U.S.C. 1801 et seq.)

[45 FR 1033, Jan. 4, 1980, as amended at 45 FR 15935, Mar. 12, 1980; 45 FR 81056, Dec. 9, 1980]

§ 611.94 Snail fishery.

(a) *Purpose.* This section regulates foreign fishing for snails (all species of the genera *Neptunea, Fusitriton, Buccinum, Beringius, Volutopsius, Clinopegma, Plicifusus,* and *Pyrulofusus*) in the Bering Sea.

(b) *Authorized fishery*—(1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *TALFF, DAH, DAP, JVP, Reserve.* The annual total allowable level of foreign fishing (TALFF), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and reserve for snails are listed in Appendix 1 to § 611.20. These specifications are valid for each calendar year, unless amended.

(3) *Closures.* The taking of snails for which nation has an allocation is permitted provided that the fishery has not been closed pursuant to § 611.15.

(c) *Area, gear, and other restrictions.* No foreign fishing vessel may:

(1) Fish for snails east of 164° W. long., or within twelve miles of the baseline used to measure the territorial sea;

(2) Fish for snails using gear other than pots; or

(3) Retain in the snail fishery any species other than snails.

(d) *Additional statistical report.* Each nation whose vessels engage in this fishery shall report, by May 30 of the following year, annual catch and effort statistics as follows: *Effort* in number of pots hauled and hours pots soaked, by month, by ½° (lat.) X 1° (long.) statistical area; *Catch* in metric tons of edible meat, by month, by ½° (lat.) X 1° (long.) statistical area.

[43 FR 59293, Dec. 19, 1978, as amended at 46 FR 1739, Jan. 7, 1981]

§ 611.95 Bering Sea and Aleutian Islands Herring Fishery.

(a) *Purpose.* (1) This section regulates foreign fishing for herring within that portion of the Bering Sea, and that portion of the North Pacific Ocean adjacent to the Aleutian Islands west of 170° W. longitude, over which the United States exercises exclusive fishery management authority (hereafter referred to in this section as the "management area").

(2) Regulations governing foreign fishing for Tanner crab, groundfish, and snails are set forth in 50 CFR 611.91, 611.93 and 611.94 respectively. Since groundfish and herring fishing are generally conducted by the same vessels and gear, §§ 611.93 and 611.95 are appropriately cross-referenced.

(b) *Authorized fishery*—(1) *Foreign fishing.* Foreign fishing for herring in the management area is prohibited except as authorized by this section.

(2) *OY's, TALFF's and Reserves.* (i) The amounts of herring specified as the optimum yield (OY), initial estimate of joint venture processing (JVP), total allowable level of foreign fishing (TALFF) and reserve are stated in Part 4 B, Appendix I of § 611.20.

(ii) The specifications in Part 4 B, Appendix I are effective from January 1 through December 31.

(3) *Apportionment to TALFF of Reserves*—(i) *Apportionment to TALFF.* As soon as practicable after each of the following dates, and after consultation with the North Pacific Fishery Management Council, the Regional Director shall apportion to TALFF up to one-fourth (¼) of the reserve amount set forth in Part 4 B, Appendix I of § 611.20, in accordance with paragraph (b)(3)(ii) of this section: February 2, April 2, June 2, and August 2.

(ii) *Standards and Procedure for Apportionment*—(A) *General.* The Regional Director shall apportion under paragraph (b)(3)(i) of this section such amounts of herring reserve as he determines will not be harvested by vessels of the United States during the remainder of the year. The amount of reserve which the Regional Director determines will be harvested by vessels of the United States may, in the discretion of the Regional Director, be either apportioned to the estimate of domestic annual harvest (DAH) or retained in the reserve as eligible for later apportionment under paragraph (b)(3)(ii)(F) of this section.

(B) *Factors.* In determining whether or not amounts proposed to be apportioned under paragraph (b)(3)(i) of this section will be harvested by vessels of the United States during the remainder of the fishing year, the Regional Director shall consider the following factors, although he shall not be limited to these factors:

(*1*) Reported United States catch and effort by species and area compared to previously projected United States harvesting capacity;

(*2*) Projected United States catch and effort by species and area for the remainder of the fishing year;

(*3*) Amounts of fish already purchased or processed by United States fish processors during the fishing year, compared to previously projected processing capacity of United States fish processors;

(*4*) Projected processing capacity, and utilization of that capacity for the processing of United States harvested fish, by United States fish processors for the remainder of the fishing year;

(*5*) Amounts of United States harvested fish already purchased or processed by foreign fishing vessels, compared to previously projected levels of such purchase or processing.

(C) *Allocation of increases in DAH between DAP and JVP.* The Regional Director shall allocate any increases in DAH amounts resulting from apportionments under paragraph (b)(3)(i) of this section between the estimates of domestic annual processing (DAP) and joint venture processing (JVP).

(D) *Public comment.* (*1*) Comments may be submitted to the Regional Director concerning:

(*i*) Whether and the extent to which vessels of the United States will harvest reserve or DAH amounts during the remainder of the fishing year; and

(*ii*) Whether and the extent to which United States harvested herring can or will be processed by United States fish processors or by foreign processing vessels.

Comments should be addressed to Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 99802, and must be received by the Regional Director no later than 5 days before the relevant date specified in paragraph (b)(3)(i) of this section (i.e. January 28, March 28, May 28 and July 28).

(*2*) The Regional Director shall consider any timely comments submitted in accordance with this paragraph in determining whether and to what extent vessels of the United States will harvest reserve or DAH amounts during the remainder of the fishing year, and whether any part of such amounts will be allocated to TALFF under paragraph (b)(3)(i) of this section.

(*3*) The Regional Director shall compile, in aggregate form, the most recent available reports on (*i*) level of catch and effort by vessels of the United States fishing for herring in the Bering Sea and Aleutian Islands fishery; and (*ii*) amounts of United States harvested herring taken in the Bering Sea and Aleutian Islands fishery and processed by United States fish processors or delivered at sea to foreign fishing vessels. These data shall be available for public inspection during business hours (8:00 a.m.-4:30 p.m., Monday-Friday) at the National Marine Fisheries Service Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802, during the last 15 days of each comment period.

(E) As soon as practicable after each of the dates specified in paragraph (b)(3)(i) of this section, the Regional Director shall publish in the FEDERAL REGISTER:

(*1*) Any reserve amounts to be apportioned to TALFF;

(*2*) The distribution of amounts apportioned to DAH between DAP and JVP;

(*3*) The reasons for any apportionments and their distribution; and

(*4*) Responses to any comments received.

(F) *Add-on.* If, following any of the four dates specified in paragraph (b)(3)(i) of this section, the Regional Director apportions less than 25 percent of any reserve amount to TALFF and DAH, the nonapportioned part of that 25 percent shall be added to the reserve amounts available for apportionment on the next date specified in paragraph (b)(3)(i) of this section.

(4) *Fishing Permitted.* (i) Foreign fishing for herring in the management area, and retention of the amount of any herring for which a nation has an allocation is permitted, except as provided in this section.

(ii) The Regional Director shall issue a notice of closure, pursuant to the procedures of § 611.15(c), prohibiting foreign herring fishing in the management area when he determines that one or more of the following catch limitations will be reached:

(A) Optimum yield (OY) or TALFF for herring or any groundfish species or species group specified in Part 4 A, Appendix I of § 611.20. The Regional Director shall issue a notice prohibiting herring fishing in the management area by vessels subject to this section, until January 1.

(B) The allocation of a nation for herring or any groundfish species or species group specified in Part 4 A, Appendix I of § 611.20. The Regional Director shall issue a notice prohibiting herring fishing in the management area by all vessels of that nation until January 1.

(iii) On the effective date of a notice of closure issued by the Regional Director pursuant to the procedures of § 611.15(c), herring fishing by vessels of that nation is prohibited during the period stated in the notice. A notice of closure issued pursuant to paragraph (b)(4) of this section shall not apply to any receipt or processing of United States harvested fish by foreign vessels which is authorized by permit issued by the Department of Commerce under the Act. Foreign receipt and processing of U.S. harvested fish may continue until specifically prohibited under the procedures prescribed in the applicable permit.

(iv) A notice issued pursuant to this paragraph shall expire (A) on the effective date of a notice issued pursuant to § 611.15(c) rescinding that previous notice; or (B) when the time period stated in that notice expires.

(5) *Fishing prohibited.* Whether or not a nation receives a notice issued under paragraph (b)(4) of this section, herring fishing by vessels of a nation is prohibited when that nation's national allocation for herring or any groundfish species or species group specified in Part 4 A, Appendix I of § 611.20 is reached.

(c) *Open Areas.* Except for the closed areas set forth in paragraph (d) of this section, foreign fishing by vessels regulated under this section is permitted at all times throughout that portion of the management area beyond 12 miles from the baseline used to measure the territorial sea.

(d) *Closed Areas—*(1) *3-12 Miles.* Foreign fishing for herring is prohibited in that portion of the management area between three and twelve nautical miles from the baseline used to measure the territorial sea, with the following exceptions:

(i) Foreign fishing vessels holding permits to receive United States harvested fish may receive, to extent authorized by the applicable permit, only United States harvested fish in the management area between 3 and 12 nautical miles from the baseline from which the United States territorial sea is measured: the receipt of foreign-caught fish by foreign vessels is prohibited unless receipt takes place in an area and during a period when foreign herring fishing is permitted;

(ii) Herring fishing is permitted in those areas and during those periods when foreign trawling is permitted by 50 CFR 611.93(d)(1);

(2) Herring fishing is prohibited in those areas and during those periods when foreign trawling is prohibited by 50 CFR 611.93(d)(2); and

(3) No foreign vessel may conduct a directed fishery for herring east of 168° W. longitude (see 50 CFR 611.2(j) and 611.12).

(e) *Additional statistical report.* Each nation whose vessels catch herring shall report, by May 30 of the following year, annual catch and effort statistics as follows:

(1) *Effort,* in hours trawled, and number of days fished, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) statistical area; and

(2) *Catch* of herring in metric tons, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) statistical area.

[45 FR 1035, Jan. 4, 1980]

PART 620—CITATIONS

Sec.
620.1 Purpose.
620.2 Definitions.
620.3-620.4 [Reserved]
620.5 Issuance of citations.

Sec.
620.6 Record of citations.
620.7 Review of citations.

AUTHORITY: 16 U.S.C. 1861 and 1855.

SOURCE: 42 FR 11839, Mar. 1, 1977, unless otherwise noted.

§ 620.1 Purpose.

Regulations in this part are published jointly by the National Marine Fisheries Service and the Coast Guard to provide uniform rules for the issuance of citations to fishing vessel owners or operators under section 311(c) of the Fishery Conservation and Management Act of 1976 (the Act), 16 U.S.C. 1801, 1861(c).

§ 620.2 Definitions.

Unless the context otherwise requires, terms in these regulations have the meanings prescribed in sections 3 and 311(e) of the Act. In addition, the following definitions apply:

(a) *Citation.* Written notice that a violation has been documented and a warning that a future offense may be dealt with more severely.

(b) *Director.* Director, National Marine Fisheries Service, or his designee.

§§ 620.3-620.4 [Reserved]

§ 620.5 Issuance of citations.

(a) Any authorized enforcement officer who finds that a fishing vessel is operating or has been operated in violation of any provision of the Act may issue a citation to the owner or operator of the vessel.

(b) A citation is issued in the sole discretion of the authorized officer for minor or technical violations and substitutes for other law enforcement action the officer could take under the circumstances, such as seizure of the vessel and arrest of the master.

§ 620.6 Record of citations.

(a) If the offending vessel holds a permit under the Act, the issuance of a citation shall, as soon as practicable, be noted on the permit with the date of the citation and the reason for its issuance. If notation on the permit is impracticable, notice of issuance of the citation will promptly be served personally or by registered or certified mail, return receipt requested, on the vessel's owner, operator, or designated agent for service of process, and such service shall be deemed notation on the permit.

(b) The Director shall cause a record of citation to be maintained.

§ 620.7 Review of citations.

(a) Upon application by the persons to whom a citation was issued, the Director may review any citation issued under these regulations if:

(1) The application is filed in writing within 60 days of the date of the citation at the address of the Regional Director, National Marine Fisheries Service, nearest to the place where the citation was issued (Seattle, Washington 98102; Terminal Island, California 90731; Juneau, Alaska 98109; Gloucester, Massachusetts 01930; or St. Petersburg, Florida 33702); and

(2) The application sets forth circumstances which in the judgment of the Director make review appropriate in the interest of justice.

(b) Upon completion of his review, the Director will notify the applicant of his action, which shall be final and unappealable.

PART 621—CIVIL PROCEDURES

Subpart A—Introduction

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621.2 Enforcement policy.
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AUTHORITY: 16 U.S.C. 1801-1882, unless otherwise noted.

SOURCE: 45 FR 18932, Mar. 24, 1980, unless otherwise noted.

Subpart A—Introduction

§ 621.1 Purpose and scope.

(a) Section 308 of the Act authorizes the Secretary to assess a civil penalty, in an amount not to exceed $25,000, for each violation against any person found to have committed an act prohibited by section 307. Each day of a continuing violation is considered a separate offense. The Administrator has been delegated the authority to assess these administrative money penalties.

(b) Section 204(b)(12) of the Act details the circumstances under which the Administrator is to revoke, suspend, or modify certain foreign fishing vessel permits. Regulations implementing specific fishery management plans contain provisions for permit sanctions in respect both to foreign and domestic fishing vessels.

(c) Section 310(c) of the Act makes provisions of the customs laws relating to, among other things, the remission or mitigation of forfeitures and the compromise of claims, applicable to forfeitures of fishing vessels and fish alleged to be authorized under the Act. The Department of Commerce is authorized to entertain petitions for administrative settlement of property seizures made under the Act which would otherwise proceed to judicial forfeiture.

(d) The regulations in this part provide uniform rules and procedures for the assessment of civil penalties (Subparts B and C), permit sanctions (Subpart D), and the remission or mitigation of forfeitures (Subpart E).

(e) Subparts B and C of this part shall apply to any civil penalty proceeding initiated by Notice of Violation and Assessment (NOVA) subsequent to the effective date of revisions to this part which authorized issuance of the NOVA, regardless of when the act or omission which is the basis of a civil penalty proceeding occurred. Proceedings initiated by Notice of Violation under former Subparts B and C, promulgated March 1, 1977, 42 FR 12026, shall be governed by those procedures, except as otherwise stipulated by the parties.

§ 621.2 Enforcement policy.

(a) The Act provides four basic enforcement remedies for violations, in ascending order of severity as follows: (1) Issuance of a citation (a type of warning), usually at the scene of the offense (see 50 CFR Part 620); (2) assessment by the Administrator of a civil money penalty; (3) for certain violations, judicial forfeiture action against the vessel and its catch; and (4) criminal prosecution of the owner or operator for some offenses. It shall be the policy of the Agency to enforce vigorously and equitably the provisions of the Act by utilizing that form or combination of authorized remedies best suited in a particular case to this end.

(b) Processing a case under one remedial form usually means that other remedies are inappropriate in that case. However, further investigation or later review may indicate the case to be either more or less serious than initially considered, or may otherwise reveal that the penalty first pursued is inadequate to serve the purposes of the Act. Under such circumstances, the Agency may pursue other remedies either in lieu of or in addition to the action originally taken. Forfeiture of the illegal catch does not fall within this general rule and is considered in most cases as only the initial step in remedying a violation by removing the ill-gotten gains of the offense (see paragraph (d) of this section).

(c) If a fishing vessel for which a permit has been issued under the Act is used in the commission of an offense prohibited by section 307 of the Act, the Agency may impose permit sanctions whether or not civil or criminal action has been undertaken against the vessel or its owner or operator. In some cases, the Act requires permit sanctions following the assessment of a civil penalty or the imposition of a criminal fine. In sum, the Act treats sanctions against the fishing vessel permit to be the carrying out of a purpose separate from that accomplished by civil and criminal penalties against the vessel or its owner or operator.

(d) (1) In view of the perishable nature of fish, any person authorized to enforce the regulations contained in this chapter may cause to be sold, and any person may purchase, for not less than its fair market value, such quantities of perishable fish as may be seized pursuant to the Act.

(2) The proceeds of any such sale, after deducting the reasonable costs of the sale, if any, shall be submitted to an appropriate court of competent jurisdiction and an *in rem* complaint for forfeiture shall be filed with respect to such proceeds.

(3) Seizure and sale of fish shall be without prejudice to any other remedy or sanction authorized by law and this chapter.

§ 621.3 Filing and service of documents.

(a) Whenever the regulations in this part require service of a document or other paper, such service may effectively be made on the agent for service of process or on the attorney for the person to be served. Refusal by the person to be served, or his or her agent or attorney, of service of a document or other paper shall be considered effective service of the document or other paper as of the date of such refusal.

(b) Whenever the regulations in this part or in an order issued hereunder require a document or other paper to be filed within a certain period of time, such document will be considered filed as of the date of the postmark, if mailed, or (if not mailed) as of the date actually delivered to the office where filing is required. Time periods shall begin to run on the day following the date of the document, paper, or event which begins the time period and, unless otherwise provided by law or these regulations, includes the last day of the period, unless such day is a Saturday, Sunday, or Federal holiday, in which event it includes the next following day which is not a Saturday, Sunday, or Federal holiday.

(c) If an oral or written application is made to the Administrator within 10 calendar days after the expiration of a time period established in this part for the required filing of documents or other papers, the Administrator may permit a late filing if he or she finds reasonable grounds for an inability or failure to file within the time period. All such extensions shall be in writing. Except as provided in this paragraph, by § 621.22, or by order of an administrative law judge under Subpart C of this part, no requests for an extension of time may be granted.

§ 621.4 Definitions.

Unless the context otherwise requires, terms in these regulations have the meanings prescribed in section 3 of the Act, and special reference is made to the following terms: "Fishery conservation zone," "fishery resource," "fishing vessel," and "Secretary." In addition, the following definitions apply:

(a) *Act.* Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 to 1882.

(b) *Administrator.* Administrator, National Oceanic and Atmospheric Administration, or his or her designee.

Subpart B—Assessment Procedure

§ 621.21 Notice of violation and assessment (NOVA).

(a) A Notice of violation and assessment (NOVA) shall be issued by the

Administrator and served personally or by registered or certified mail, return receipt requested, upon the person alleged to be subject to a civil penalty (the respondent). A copy of the NOVA shall similarly be served upon the owner of an affected vessel, as defined in § 621.26, if the owner is not the respondent. Although no specific form is prescribed, the NOVA shall contain: (1) A concise statement of the facts believed to show a violation; (2) a specific reference to the provisions of the Act, regulation, permit, or governing international fishery agreement allegedly violated; (3) the findings and conclusions upon which the administrator has based the proposed assessment; and (4) the amount of penalty proposed to be assessed.

(b) In respect to the amount of civil penalty, the Administrator shall take into account information available to the agency concerning the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the respondent, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(c) The NOVA may also contain an initial proposal for compromise or settlement of the case. The Administrator may also attach documents which illuminate the facts believed to show a violation. The NOVA shall advise the respondent of his or her rights at that point in the proceeding, and shall be accompanied by a copy of regulations governing civil procedures, this Part 621.

§ 621.22 Procedures upon receipt of NOVA.

(a) The respondent shall have 30 calendar days from receipt of the NOVA in which to respond. During this time the respondent may:

(1) Accept the proposed penalty or compromise penalty, if any, by taking the actions specified in the NOVA;

(2) Seek to have the NOVA amended or modified as prescribed in paragraph (b) of this section;

(3) Request a hearing, as prescribed in paragraph (d) of this section; or

(4) Take no action, in which case the NOVA shall become final in accordance with § 621.23. Options 2, 3 and 4 above may also be exercised by the owner of an affected vessel, as defined in § 621.26.

(b) The respondent, or the owner of an affected vessel, may seek amendment or modification of the NOVA to conform to the facts or law as he or she sees them. In such case, he or she shall so notify the Administrator at the telephone number or address specified in the NOVA. Where amendment or modification is sought, the Administrator shall either amend the NOVA or decline to amend it, and shall so notify the respondent or owner, as appropriate.

(c) The respondent or owner of an affected vessel may, within the 30-day period specified in paragraph (a) of this section, for good cause shown which makes it impracticable to respond within 30 days, request an extension of time to respond, not to exceed an additional 15 days. If, in the Administrator's judgment, good cause is not shown, the Administrator may deny the request within 48 hours of its receipt by the Administrator. If the request is not so denied, it shall be considered granted automatically for the extension requested, up to a maximum of 15 days. Telephonic communication of a denial within the 48-hour period shall be considered effective denial, and shall be followed by written confirmation.

(d) If the respondent or the owner of an affected vessel wishes a hearing, such request shall be dated and in writing, and shall be served either in person or by certified or registered mail, return receipt requested, at the address specified in the NOVA. The request shall either attach a copy of the relevant NOVA or refer to the relevant NOAA case number.

(e) Any denial, in whole or in part, of any request under this section which is based upon untimeliness shall be made in writing.

(f) The Administrator may, in his or her discretion, treat any communication from a respondent or owner as a request for a hearing pursuant to paragraph (d) of this section.

§ 621.23 Final administrative decision.

(a) If no request for hearing is filed as provided in § 621.22, the NOVA shall become effective and shall constitute the final administrative decision and order of the Secretary on the 30th calendar day after service of the NOVA, or on the last day of any delay period granted.

(b) If a request for hearing is filed in accordance with § 621.22, the date of the final administrative decision shall be as provided in Subpart C of this Part 621.

§ 621.24 Payment of final assessment.

(a) Respondent shall make full payment of the civil penalty assessed within 30 calendar days of the date upon which the assessment becomes effective as the final administrative decision and order of the Secretary under § 621.23 or § 621.41 of this part; or, if judicial review of the assessment is initiated under section 308(b) of the Act during such 30 day period, within 10 calendar days after the appropriate court has entered final judgment in favor of the Secretary, unless the court's order provides otherwise. Payment shall be made by mailing or delivering to the Administrator at the address specified in the NOVA a check or money order made payable in United States currency in the amount of the assessment to the "Treasurer of the United States."

(b) Upon any failure to pay the civil penalty assessed, the Administrator may request the Attorney General of the United States to recover the amount assessed in any appropriate district court of the United States, or may take action under § 621.25 of this part.

§ 621.25 Compromise of civil penalty.

(a) In his or her sole discretion, the Administrator may compromise, modify, remit, or mitigate, with or without conditions, any civil penalty which has been imposed under this Part 621, or which is subject to such imposition.

(b) The compromise authority of the Administrator under this section shall be in addition to any similar authority provided in the Act or in these regulations, and may be exercised either upon the initiative of the Administrator or in response to a request of the alleged violator or other interested person.

(c) If the Administrator takes action under this section prior to the issuance of a NOVA or after a final assessment becomes payable under § 621.24, the Administrator will prepare a document indicating the action taken and citing this section and section 308(d) of the Act as authority. Once the case has been assigned for hearing under § 621.31 of this part, the Administrator will, except in unusual circumstances, defer any compromise action under this section until the administrative law judge has rendered an initial decision in the matter. Neither the existence of the compromise authority of the Administrator under this section nor the Administrator's exercise thereof at any time shall change the date upon which an assessment becomes final or payable.

(d) If compromise action is requested or otherwise becomes appropriate for the Administrator's consideration during the pendency of a petition for relief from forfeiture, filed under Subpart E of this Part 621, the Administrator may consolidate in a manner consistent with the provisions of Subpart E his or her consideration of the two matters.

§ 621.26 Application of this subpart to vessel owners.

(a) The provisions of this subpart shall apply to owners of affected vessels. "Affected vessel" shall mean a fishing vessel of the United States whose federal fishing permit may be subject to sanction as a result of a civil penalty proceeding under this part.

(b) The provisions of this subpart shall also apply to vessel owners where such application is expressly provided by regulations in this chapter implementing a fishery management plan.

Subpart C—Hearing and Appeal Procedures

§ 621.31 Commencement of hearing procedures.

Following receipt of a written request for hearing filed in a timely manner in accordance with § 621.22 of Subpart B of this part, the Administrator will commence procedures under this subpart by forwarding the request, a copy of the NOVA, and any response thereto, to the NOAA Office of Hearings and Appeals, which shall docket the matter for hearing. Written notice of the assignment shall promptly be given to the respondent and the owner of an affected vessel (as defined in § 621.42) if the owner is other than the respondent, with the name and address of the attorney who will represent the Administrator in the proceedings (the agency representative), and thereafter all pleadings and other documents shall be filed directly with the NOAA Office of Hearings and Appeals, and a copy will be served on the opposing party (respondent or agency representative).

§ 621.32 Ex parte communications.

(a) For purposes of this section, "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports.

(b) Upon assignment of the case to an administrative law judge and until an assessment or other action in the matter becomes effective under these regulations as the final administrative decision of the Secretary, neither the judge nor any of the following agency employees shall make or knowingly cause to be made to any interested person outside the Department of Commerce an ex parte communication relevant to the merits of the proceeding:

Administrator, Assistant Administrator for Fisheries, Deputy Assistant Administrator for Fisheries, and the Executive Director, the Office of Resource Conservation and Management Director, the Enforcement of Division Chief, and all Regional Directors, National Marine Fisheries Service.

(c) Upon notice of the assignment of the case to an administrative law judge and until an assessment or other action in the matter becomes effective under these regulations as the final administrative decision of the Secretary, no interested person outside the Department of Commerce shall make or knowingly cause to be made to the judge or to an agency employee listed in paragraph (b) of this section an ex parte communication relevant to the merits of the proceeding.

(d) An agency employee or judge who makes or receives a prohibited communication shall cause to be placed in the hearing record the communication and any response thereto and the judge, or Administrator, as appropriate, may take action in this respect consistent with these regulations, the Act, and 5 U.S.C. 556(d) and 557(d).

(e) This section shall not apply to communications to or from the agency representative; however, the agency representative may not participate or advise in the initial decision of the judge or the agency review thereof except as witness or counsel in the proceeding in accordance with the regulations in this part. This section shall be interpreted so as not to diminish the compromise authority of the Administrator under § 621.25 of this part. In addition to the foregoing requirements of this section, the judge shall not consult any person or party on the substance of the matter in issue unless on notice and opportunity for all parties to participate.

(Sec. 4, Pub. L. 94-409, 5 U.S.C. 557(d))

§ 621.33 Duties and powers of judge.

(a) The administrative law judge shall have all powers and responsibilities necessary to preside over the parties and the proceeding, to hold prehearing conferences, to conduct the hearing, and to make the initial decision, in accordance with these regulations and 5 U.S.C. 554, to 557, including the authority and duty to:

(1) Rule on a request to participate as a party in the proceedings by allowing, denying, or limiting such participation, provided, however, that the respondent, the owner of an affected vessel (as defined in § 621.42), and the agency representative shall be parties, and provided further that the judge shall prior to ruling ascertain the views of the other parties and base the ruling on whether the request is from a person who could be directly and adversely affected by the final decision

and who may contribute materially to the disposition of the proceedings;

(2) Ascertain, both prior to scheduling a hearing and at other times the judge considers appropriate, from the record at hand or upon further inquiry to the parties, whether a reasonable basis exists for settlement of the matter or simplification of the issues by consent; and hold conferences or otherwise require the parties to consider settlement or to simplify the issues;

(3) Schedule the time and place of the pre-hearing conference or hearing, continue the hearing from day to day, adjourn the hearing to a later date or a different place, and reopen the hearing at any time before issuance of the initial decision, all in the judge's discretion, having due regard for the convenience and necessity of the parties.

(4) Regulate the course of the hearing and the conduct of the participants, including the power to establish rules for media coverage of the proceedings, to close the hearing in the interests of justice, to seal confidential or privileged documents from public scrutiny, and to strike testimony of a witness refusing to answer a question ruled to be proper;

(5) Administer oaths and affirmations;

(6) Rule on discovery requests and, whenever the ends of justice would thereby be served, take or cause depositions or interrogatories to be taken:

(7) Receive, exclude, limit and otherwise rule on offers of proof and evidence, provided that formal rules of evidence shall not apply to the proceeding; irrelevant, immaterial, unreliable, nonprobative, or unduly repetitious or cumulative evidence shall be excluded; and hearsay evidence shall not be inadmissible as such;

(8) Rule on motions, procedural requests, and similar matters;

(9) Examine and cross-examine witnesses and introduce into the record on the judge's own initiative documentary or other evidence;

(10) Rule on requests for appearance of witnesses or production of documents and take appropriate action upon a failure of a party to effect the appearance or production of a witness or document ruled relevant and necessary to the proceeding; as authorized by law, issue subpoenas for the appearance of witnesses or production of documents such as will aid the administrative court's jurisdiction;

(11) Require a party or witness at any time during the proceeding to state his or her position concerning any issue or his or her theory in support of such position;

(12) Take official notice of any matter not appearing in evidence which is among the traditional matters of judicial notice, or of technical or scientific facts within the general or specialized knowledge of the Department of Commerce as an expert body; or of a nonprivileged document required by law or regulation to be filed with or prepared or published by a duly constituted government body; or of any public document reasonably available to the public; provided, that the parties shall be advised of the matter so noticed and given reasonable opportunity to show the contrary; and

(13) Prepare and submit the initial decision and certify the record in accordance with § 621.39 of this part.

(b) The judge shall enter no order which purports in and of itself to effectuate the forfeiture of any property seized or otherwise detained in connection with the proceedings, except that:

(1) The judge may take account in an order of dismissal or similar decree under § 621.36 of this part that voluntary forfeiture of such property forms a part of a settlement agreement between respondent and the agency representative; or

(2) The judge may recommend to the Administrator at the time the initial decision is submitted under § 621.39 of this part that the Administrator either pursue or not pursue forfeiture or that the Administrator respond affirmatively to a petition for relief from forfeiture submitted under Subpart E of this part.

(c) The judge shall enter no order which purports in and of itself to revoke, suspend, or modify any permit issued under the Act to a vessel used in the commission of a violation which is a subject of the proceeding, except that:

(1) The judge may receive for the record, on his or her own initiative or

at the request of a party, evidence otherwise admissible which is relevant to the question of what vessel was involved in the commission of the violations with which respondent has been charged and to the question of what revocation, suspension, or modification of the permit (or, if the permit was issued under section 204(b) of the Act, what modification of all permits issued to the nation under whose flag such vessel operates) the Administrator might appropriately order pursuant to Subpart D of this part; and

(2) The judge may recommend to the Administrator at the time the initial decision is submitted under § 621.39 of this part that the Administrator pursue or not pursue certain permit sanctions under Subpart D of this part.

§ 621.34 Participation by parties.

(a) The respondent, the owner of an affected vessel (where prescribed by § 621.42), the agency representative, and, to the extent permitted by the judge, any other party, may appear in person, by counsel, or by other representative, and may examine and cross-examine witnesses to the extent required for a full and true disclosure of the facts, present documentary or other evidence in support of his or her case or defense, and conduct oral argument at the close of testimony, provided, however, that this section shall not be interpreted to diminish the powers and duties of the judge set forth in § 621.33 of this part.

(b) Failure of any party to appear at the hearing shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the record of the hearing.

§ 621.35 Record.

(a) The Administrator shall provide the services of an official reporter to transcribe verbatim the testimony taken and arguments made in the hearing. Copies of the official transcript may be obtained from the reporter upon payment of the applicable rates fixed by the contract with the reporter.

(b) The official transcript, exhibits, briefs, requests, and other documents and papers filed or officially noticed in the proceeding shall constitute the exclusive record for decision.

§ 621.36 Settlements.

An agreement by respondent and the agency representative to settle the matter, if filed before an assessment or other action in the case becomes effective under these regulations as the final administrative decision of the Secretary, shall terminate the proceedings and vacate any initial or administrative appellate decision which has been issued. However, if settlement is reached before the judge has submitted the initial decision and certified the record under § 621.39 of this part, the judge may require submission of a copy of the agreement solely to assure that the judge's consideration of the case is completed and to order the matter dismissed on the basis of the agreement.

§ 621.37 Interlocutory appeals.

(a) At the request of a party or on the judge's own motion, the judge may certify to the Administrator for review a ruling which does not finally dispose of the proceeding if the judge determines that such ruling involves a controlling question of law and that an immediate appeal therefrom may materially advance the ultimate disposition of the matter.

(b) Upon certification by the judge of an interlocutory ruling for review, the Administrator shall expeditiously decide the matter, taking into account any briefs in this respect filed by the parties within 10 calendar days of certification. The Administrator's order on an interlocutory appeal shall not be considered the final administrative decision of the Secretary except by operation of other provisions in this part.

(c) No interlocutory appeal shall lie as to any ruling not certified to the Administrator by the judge. Objections to non-certified rulings shall be a part of the record and shall be subject to review at the same time and in the same manner as the Administrator's review of the initial decision of the judge upon any appeal therefrom under § 621.40 of this part.

§ 621.38 Proposed findings and conclusions.

Unless a different schedule is established in the discretion of the judge, the parties may file proposed findings of fact and conclusions of law, together with supporting briefs, within 30 calendar days after the judge closes the hearing. Reply briefs may be submitted within 15 calendar days after receipt of the proposed findings and conclusions to which they respond, unless the judge sets a different schedule.

§ 621.39 Initial decision.

(a) After expiration of the period provided in § 621.38 of this part for filing reply briefs, the judge shall render a written initial decision upon the record in the case, setting forth therein:

(1) Findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record. In determining the amount of a penalty assessment, the judge shall not be bound by the amount proposed or assessed in the notice of violation, NOVA, notice of assessment, or elsewhere, but shall decide the matter de novo, stating the reasons in view of the applicable factors which must be considered, as set forth in section 308(a) of the Act and § 621.21 of this part;

(2) Reasons for the rejection of findings and conclusions proposed by the parties;

(3) A statement of facts officially noticed and relied upon in the decision, if the parties have not previously been advised of such notice; and

(4) Such other matters as the judge considers appropriate, including recommendations, if any, regarding forfeiture action and permit sanctions, as described in paragraphs (b) and (c) of § 621.33 of this part.

(b) The judge shall submit the initial decision to the Administrator, serve copies on the parties, and transmit to the Administrator the record of the proceeding together with a certification to the effect that, to the best of the judge's knowledge and belief, the record is a complete and accurate compilation of all evidence and other documents in the proceeding, except in such particulars as are specified.

§ 621.40 Appeals.

(a) Any party may appeal the initial decision of the judge by filing a notice of appeal with the Administrator, at the address specified by the agency, within 45 calendar days of the date of the initial decision. The notice of appeal shall concisely state such exceptions as the appellant takes to the initial decision and shall contain citations to the record or other authority relied upon. The appellant shall serve a copy of the notice of appeal on the other parties.

(b) The Administrator shall decide the appeal upon the record already made or may issue orders specifying the filing of supplemental briefs, remanding the matter for the receipt of further evidence by an administrative law judge, or otherwise assisting in the determination of the matter. The decision of the Administrator shall be in writing and shall state the reasons for acceptance or rejection of exceptions taken by the appellant. To the extent the Administrator's decision is silent as to a material issue of fact, law, or discretion presented on the record, the decision shall be deemed to adopt the findings and conclusions thereon, and the reasons or basis therefor, contained in the initial decision.

§ 621.41 Final decision.

(a) Unless a notice of appeal is timely filed in accordance with § 621.40, the initial decision of the judge shall become effective and shall constitute the final administrative decision and order of the Secretary on the 45th calendar day from the date it is rendered.

(b) If a notice of appeal is timely filed as provided in § 621.40 of this part, the Administrator's decision thereon shall become effective and shall constitute the final administrative decision and order of the Secretary on the date thereof, or as otherwise specified by the Administrator in the decision.

(c) Payment of any assessment which becomes final under this section shall be made in accordance with § 621.24 of this part.

§ 621.42 Application of this subpart to vessel owners.

(a) The provisions of this subpart shall apply to owners of affected vessels. "Affected vessel" shall mean a fishing vessel of the United States whose federal fishing permit may be subject to sanction as a result of a civil penalty proceeding under this part.

(b) The provisions of this subpart also apply to vessel owners where such application is expressly provided by regulations in this chapter implementing a fishery management plan.

Subpart D—Permit Sanctions

§ 621.51 Application of subpart.

The provisions of this subpart shall govern the revocation, suspension, and modification of any permit issued under the Act for a fishing vessel, including:

(a) Permits issued for foreign fishing vessels pursuant to section 204(b) of the Act in respect to a governing international fishery agreement;

(b) Registration permits issued for foreign fishing vessels pursuant to section 204(c) of the Act with respect to an existing international fishery agreement, except to the extent that such agreement is inconsistent with the provisions of this subpart; and

(c) Permits issued for fishing vessels of the United States in accordance with section 303(b)(1) of the Act and regulations issued by the Secretary under section 305 of the Act implementing a fishery management plan, except to the extent such regulations expressly limit application of the provisions of this subpart.

§ 621.52 Basis for sanctions.

(a) The Administrator may take action under this subpart with respect to a permit issued under the Act for a fishing vessel if:

(1) The fishing vessel for which the permit was issued has been used in the commission of an offense prohibited by section 307 of the Act; or

(2) A civil penalty pertaining to a fishing vessel for which the permit was issued has been assessed under Subparts B or C of this Part 621 but full payment of the penalty has not been made in accordance with § 621.24 of this part; or

(3) A criminal fine pertaining to a fishing vessel for which the permit was issued has been imposed under section 309 of the Act but full payment of the fine has not been made in accordance with the Court's decree; or

(4) The requirements of a regulation issued under the Act to govern permit sanctions in the implementation of a fishery management plan have been satisfied, including, but not limited to, permit sanction point systems.

(b) If the provisions of paragraphs (a)(2) or (a)(3) of this section are met and the fishing vessel involved is a foreign fishing vessel the permit for which was issued under section 204(b) of the Act in respect to a governing international fishery agreement, the Administrator shall take action under this subpart with respect to such permit.

(c) Any permit which is suspended solely on the basis described in paragraph (a)(2) of this section shall be reinstated by affirmative order of the Administrator promptly upon receipt, in the manner prescribed in § 621.24 of this part, of full payment of the civil penalty assessed, together with interest thereon at the annual rate provided by current regulations of the Department of the Treasury as to late payment of amounts due the Government, computed from the date payment first became overdue under § 621.24 of this part.

§ 621.53 Nature of sanctions.

In his or her discretion and subject to the requirements of this subpart, the Administrator may take any of the following actions or combinations thereof with respect to a permit issued under the Act;

(a) Revoke the permit and, if appropriate, prohibit the issuance of a permit in future years to the fishing vessel involved, or impose additional requirements for such future issuance;

(b) Suspend the permit, either for a specified period of time or until certain stated requirements are met, or both;

(c) Modify the permit, as by imposing additional conditions and restrictions thereon and, if the permit was issued for a foreign fishing vessel operating under a governing international fishery agreement, by imposing additional conditions and restrictions on the application of the foreign nation involved which was approved under section 204 of the Act, and on any of the permits under such application.

§ 621.54 Notice of permit sanction.

(a) The Administrator shall prepare a notice of permit sanction (NOPS) setting forth the sanction to be imposed and the basis therefor. If an opportunity for hearing is provided by § 621.55 of this part, the notice will advise that the permit holder has 30 calendar days from receipt of the notice in which to request or waive a hearing. The notice shall further state the effective date of the sanction, which shall not be earlier than 30 calendar days after the date of the notice unless the Administrator takes action under paragraph (c) of this section. If a hearing opportunity is provided and a hearing is requested in a timely manner, the sanction shall become effective pursuant to § 621.56 of this part, unless the Administrator provides otherwise pursuant to the authority of paragraph (c) of this section.

(b) The NOPS shall be served personally or by registered or certified mail, return receipt requested, on the owner or operator of the fishing vessel for which the permit was issued. However, if the vessel is a foreign fishing vessel, service shall be made on the agent for service of process for such owner or operator, except that if no agent for service of process has been appointed, or if the identity or location of such agent is unknown to the Administrator, service may be made on the consular or other officials of the foreign nation involved through, and as considered appropriate by, the U.S. Department of State.

(c) The Administrator may make the permit sanction effective immediately or otherwise earlier than 30 days after the notice of permit sanction if the Administrator finds, and summarizes such finding and the basis therefor in the notice, that

(1) Substantial harm to a fishery resource of the United States may result from a later effective date; or

(2) The offense serving as the basis for the permit sanction was willful or egregious; or

(3) The basis for the sanction is the accumulation of sufficient points under other regulations in this chapter implementing a fishery management plan.

If the Administrator acts under this paragraph, he or she shall seek to expedite a hearing the opportunity for which is provided by § 621.55, but a request for hearing shall not delay the effectiveness of the sanction.

§ 621.55 Opportunity for hearing.

(a) The owner or operator of the fishing vessel for which the permit was issued, or the designated agent for service of process, shall have 30 calendar days from receipt of the NOPS to request a hearing. The Administrator shall not, however, be required to hold a hearing if such owner or operator had, with respect to the violation which forms the basis for the permit sanction, the previous opportunity to participate as a party in a judicial hearing on a criminal charge brought under section 309 of the Act or in an administrative hearing on a civil penalty action initiated under section 308 of the Act and Subparts B and C of this part, whether or not the owner or operator so participated, and whether or not such a hearing was held.

(b) If no hearing opportunity is required by paragraph (a) of this section, the Administrator may nonetheless order a hearing if he or she determines that there are material issues of fact or equity to be further explored.

§ 621.56 Hearing and decision.

(a) If a timely request for the hearing provided by § 621.55(a) of this part is received or the Administrator orders a hearing under § 621.55(b) of this part, the Administrator shall appoint a hearing examiner to conduct a fact-finding inquiry into the matter.

(b) If the Administrator has initiated sanctions under § 621.53(c) of this part as to more than one permit and has received hearing requests properly made under § 621.55 of this part from the owners or operators of two or more of the affected fishing vessels, he or she may order the hearings to be consolidated into a single proceeding.

(c) The hearing examiner shall hold an informal hearing in the matter and expeditiously thereafter furnish the Administrator a report with recommendations.

(d) Upon receipt of the report and recommendations of the hearing examiner, the Administrator shall as soon as practicable decide the matter and serve notice of the decision on the permit holder in the manner provided by § 621.54(b). The decision of the Administrator shall be final and unappealable.

Subpart E—Remission of Forfeitures

§ 621.61 Application of subpart.

(a) Authorized enforcement officers are empowered by section 311 of the Act to seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) which reasonably appears to have been used in violation of the Act, of any permit or regulation issued pursuant to the Act, or of any applicable international fishery agreement. Enforcement agents may also seize illegally taken or retained fish, as well as other evidence related to a violation. Section 310 provides for the judicial forfeiture of such vessels and fish. This subpart establishes procedures for filing with the Administrator a petition for relief from forfeitures incurred or alleged to be authorized under section 310 of the Act.

(b) For purposes of this part, the "remission or mitigation of a forfeiture" or "relief from forfeiture" means action by the Administrator, following coordination as necessary with other federal agencies and the courts, to release from the custody of the United States property seized and subject to forfeiture under the Act, or part of such property, upon compliance with any terms and conditions set by the Administrator, such as payment of a stated amount in settlement of the forfeiture aspects of a violation. Although the Administrator may properly combine consideration of a petition for relief from forfeiture with other consequences of a violation of the Act, his or her action in remission or mitigation of a forfeiture shall not be considered dispositive of a criminal charge which may be filed under section 309 of the Act, or a civil penalty which may be assessed under Subparts B and C of this part, or a permit sanction which may be imposed under Subpart D, unless the action expressly so states. Remission or mitigation of a forfeiture is in the nature of executive clemency granted in the sole discretion of the Administrator only when consistent with the purposes of the Act and the provisions of this subpart.

§ 621.62 Petition for relief from forfeiture.

(a) Any person having an interest in a fishing vessel, fish, or other property seized and subject to forfeiture under the Act may file a petition for relief from such forfeiture. The petition shall be addressed to the Administrator and filed within 60 days of the seizure by mailing or delivering the petition to the Regional Director, National Marine Fisheries Service, nearest to the place where such property is held:

Seattle, Washington 98109.
Terminal Island, California 90731.
Juneau, Alaska 99801.
Gloucester, Massachusetts 01930.
St. Petersburg, Florida 33702.

(b) The petition need not be in any particular form, but shall set forth the following:

(1) A description of the property seized;

(2) The date and place of the seizure;

(3) The interest of petitioner in the property, supported as appropriate by bills of sale, contracts, mortgages, or other satisfactory evidence;

(4) The facts and circumstances relied upon by petitioner to justify the remission or mitigation;

(5) Any request for release under § 621.66 of all or part of the seized property pending final decision on the petition, together with any offer of payment to protect the Government's in-

terest that petitioner makes in return for such release, and the facts and circumstances relied upon by petitioner in the request; and

(6) The signature of petitioner, his or her attorney, or other authorized agent. A false statement in a petition will subject petitioner to prosecution under 18 U.S.C. 1001.

§ 621.63 Investigation.

The Administrator shall promptly cause an investigation to be made of the facts and circumstances shown by the petition and the seizure, and may in this respect appoint an examiner to find the facts, by informal hearing on sworn testimony or otherwise, and to prepare a report with recommendations.

§ 621.64 Decision on petition.

(a) After the investigation authorized by § 621.63, the Administrator shall decide the matter and notify petitioner. The Administrator may remit or mitigate the forfeiture, on such terms and conditions as under the Act and the circumstances he or she deems reasonable and just, if he or she finds:

(1) That the forfeiture to which the property is subject was incurred without willful negligence and without any intention on the part of petitioner to violate the Act; or

(2) That other circumstances exist which justify remission or mitigation of the forfeiture.

(b) Unless he or she determines no valid purpose would thereby be served, the Administrator will condition a decision to remit or mitigate a forfeiture upon the submission by petitioner of an agreement, in a form satisfactory to the Administrator, to hold the United States and its officers or agents harmless from any claim based on loss of or damage to the seized property. If petitioner is not the beneficial owner of the property, the Administrator may require petitioner to submit such an agreement executed by the beneficial owner. The Administrator may also require that the property be promptly exported from the United States.

§ 621.65 Compliance with decision.

A decision by the Administrator to remit or mitigate the forfeiture upon stated conditions, as upon payment of a specified amount, shall be effective for 60 days after the date of the decision. If petitioner has not within such period complied with the stated conditions, in the manner prescribed by the decision, or made arrangements satisfactory to the Administrator for later compliance, the matter will promptly be referred to the Attorney General of the United States to effect judicial forfeiture in full of the seized property to the United States under section 310 of the Act.

§ 621.66 Release of seized property pending decision.

(a) Upon request in the petition for relief from forfeiture, and taking account of any interim report or recommendation of an examiner appointed under § 621.63, the Administrator may order the release, pending final decision on the petition, of all or part of the seized property upon payment by petitioner of the full value of the property to be released or such lesser amount as the Administrator in his or her sole discretion deems sufficient to protect the interests served by the Act.

(b) If the Administrator grants the request, he or she will cause the amount paid by petitioner to be deposited in a suspense account maintained for the purpose. The amount so deposited shall for all purposes be considered to represent the property seized and subject to forfeiture under the Act, and payment of the amount by petitioner constitutes a waiver of any claim of defective seizure, custody and control, commingling of proceeds, or related defenses. The Administrator will cause records to be kept of amounts deposited in the suspense account and will retain such deposits pending his or her further order or a court order issued under sections 310 or 311 of the Act.

(c) The provisions of paragraph (b) of § 621.64 of this part will apply to a release of property made under this section.

PART 651—ATLANTIC GROUNDFISH (COD, HADDOCK, AND YELLOWTAIL FLOUNDER)

Subpart A—General

Sec.

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APPENDIX A—QUARTERLY QUOTAS
APPENDIX B—CATCH LIMITATIONS

AUTHORITY: 16 U.S.C. 1801 et seq.

SOURCE: 44 FR 887, Jan. 3, 1979, unless otherwise noted.

Subpart A—General

§ 651.1 Purpose and scope.

The regulations in this part govern fishing for groundfish by fishing vessels of the United States within that portion of the Atlantic Ocean over which the United States exercises exclusive fishery management authority. These regulations implement the Atlantic groundfish fishery management plan developed by the New England Management Council.

§ 651.2 Definitions.

Some definitions in the Act have been repeated here to aid understanding of the regulations. In addition to the terms defined in the Act, the terms used in this part shall have the following meanings:

Act means the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801-1882, as amended.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or an individual to whom appropriate authority has been delegated.

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the United States Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the Coast Guard to enforce the provisions of the Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Catch, take or harvest includes, but is not limited to, any activity which results in killing any fish, or bringing any live fish on board a vessel.

Discard means to throw away, cast back, or return to the sea any fish that has been caught. The removal and release of a live fish before that fish is brought on board a vessel is not a discard. Failure to retain any live fish once it is on board a vessel, or the failure to retain any dead fish, is a discard.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research activity conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described above.

Fishing vessel means any vessel, boat, ship or other craft which is used for, equipped to be used for, or of a type which is normally used for: (a) Fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation or processing.

Fishing week means the weekly period running from 0001 hours Sunday through 2400 hours Saturday.

Fixed gear includes, but is not limited to, all gill nets, longlines, line trawls, and jig lines.

Georges Bank and South means that area of the Northwest Atlantic Ocean subject to the fishery jurisdiction of the United States, except the Gulf of Maine.

Groundfish means any cod (*Gadus morhua*), haddock (*Melanogrammus aeglefinus*), or yellowtail flounder (*Limanda ferrugineo*).

Gulf of Maine means that portion of the Northwest Atlantic Ocean north of 42°20′ North latitude, plus that area south of 42°20′ North latitude which is west of 70°00′ West longitude and which is bounded on the south by the northern shore of Cape Cod.

Land means to begin offloading fish, or to arrive in port with the intention of offloading fish.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function or operation of the vessel; or

(d) Any agent designated as such by any person in paragraphs (a), (b), or (c) of this section.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local or foreign government or any entity of any such government.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, or his designee.

Regulated Species means any species for which fishing by a vessel of the United States is regulated pursuant to the Act.

Trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel begins to offload fish in port.

United States harvested fish means fish caught, taken, or harvested by vessels of the United States within any foreign or domestic fishery regulated under the Act.

Vessel of the United States means:

(a) Any vessel documented or numbered by the Coast Guard under United States law; or

(b) Any vessel, under five net tons, which is registered under the laws of any State.

§ 651.3 Relation to other laws. [Reserved]

§ 651.4 Vessel permits.

(a) *General.* Any vessel of the United States fishing for groundfish must have a permit under this part.

(b) *Application.* (1) An application for a vessel permit for the groundfish fishery shall be submitted and signed by the vessel owner on an appropriate form, which may be obtained from the Regional Director. The application shall be submitted to the Regional Director, prior to the date on which the applicant desires to have the permit made effective.

(2) Applicants shall provide all of the following information:

(i) The name, mailing address, and telephone number of the applicant and the vessel's master;

(ii) The name of the vessel;

(iii) The vessel's United States Coast Guard documentation number or State license number;

(iv) The home port, gross tonnage, and net tonnage of the vessel;

(v) The engine horsepower of the vessel;

(vi) The approximate fish-hold capacity of the vessel in pounds;

(vii) The type and quantity of fishing gear used by the vessel; and

(viii) The size of the crew, which may be stated in terms of a range.

(c) *Issuance.* (1) Upon receipt of a completed application, the Regional Director shall issue a permit within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within ten days following the date of notification, the application shall be considered abandoned.

(d) *Expiration.* A permit shall expire when the owner or name of the vessel changes.

(e) *Duration.* A permit shall continue in full force and effect until it expires or is revoked, suspended, or modified pursuant to 50 CFR Part 621.

(f) *Alteration.* Any permit which has been substantially altered, erased, or mutilated shall be invalid.

(g) *Replacement.* Replacement permits may be issued. An application for a replacement permit shall not be considered a new application.

(h) *Transfer.* Permits issued under this part are not transferable or assignable. A permit shall be valid only for the vessel for which it is issued.

(i) *Display.* Any permit issued under this part must be carried on board the fishing vessel at all times. The permit shall be displayed for inspection upon request of any Authorized Officer.

(j) *Revocation.* Subpart D of 50 CFR Part 621 shall govern the imposition of sanctions against a permit issued under this part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the vessel for which the permit is issued is used in the commission of an offense prohibited by the Act or by this part; or if a civil penalty or criminal fine imposed under the Act and pertaining to such a vessel is not paid.

(k) *Fees.* No fee is required for any permit under this part.

(l) *Change in Application Information.* Any change in the information specified in paragraph (b) of this section shall be reported to the Regional Director within 15 days of the change.

§ 651.5 Recordkeeping and reporting requirements.

(a) *Fishing vessel records.* (1) The operator of any fishing vessel conducting any fishing operation subject to this part shall:

(i) Maintain an accurate and complete fishing logbook on forms supplied by the Regional Director, according to the requirements of § 651.5(a)(2);

(ii) Make the fishing logbook available for inspection by an Authorized Officer, or any employee of the National Marine Fisheries Service designated by the Regional Director to make such inspection, at any time during or after a trip;

(iii) Keep each fishing logbook for one year after the date of the last entry in the logbook; and

(iv) Submit fishing logbook reports, as specified in § 651.5(a)(2).

(2) The owner or operator of any fishing vessel conducting any fishing operation subject to this part shall submit a complete fishing logbook report to the Regional Director within 48 hours after the end of any fishing week or fishing trip, whichever is the longer time period. Fishing logbooks shall contain information on a daily basis for the entirety of any trip during which any regulated species are caught, and shall contain information for all fish which are caught.

(3) The Assistant Administrator may revoke, modify, or suspend the permit of a vessel whose owner or operator falsifies or fails to submit the records and reports prescribed by this section, in accordance with the provisions of 50 CFR Part 621.

(b) *Fish Dealer or Processor Reports.* Any person who receives groundfish for a commercial purpose from a fishing vessel subject to this part shall:

(1) File a report with the Regional Director on forms supplied by him, within 48 hours of the end of any fishing week. Such report shall include information on all transfers, purchases or receipts of all fish made during that fishing week; and

(2) Permit an Authorized Officer, or any employe of the National Marine Fisheries Service designated by the Regional Director to make inspections,

to inspect any records of transfers, purchases or receipts of groundfish.

§ 651.6 Vessel identification.

(a) *Official Number.* Each fishing vessel subject to this part over 25 feet in length shall display its Official Number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from above. The Official Number is the documentation number issued by the Coast Guard or the certificate number issued by a State or by the Coast Guard for undocumented vessels.

(b) *Numerals.* The Official Number shall be permanently affixed to each vessel subject to this part in contrasting block Arabic numerals at least 18 inches in height for vessels over 65 feet and at least 10 inches in height for all other vessels over 25 feet in length.

(c) *Vessel length and number.* The length of a vessel, for purposes of this section, shall be that length set forth by Coast Guard or State records.

(d) *Duties of operator.* The operator of each vessel subject to this part shall:

(1) Keep the identifying markings clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging or its fishing gear obstructs the view of the Official Number from an enforcement vessel or aircraft.

(e) *Nonpermanent markings.* Vessels carrying fishing parties on a per capita basis or by charter shall use markings that meet the above requirements, except for the requirement that they be permanently affixed. The nonpermanent markings shall be displayed in conformity with the above requirements when the vessel is fishing for groundfish.

§ 651.7 Prohibitions.

It is unlawful for any person to:

(a) Fish for, take, catch or harvest any groundfish in an area specified in § 651.21 during a period in which that area is closed, unless allowed by that section;

(b) While fishing in closed areas I or II, attach any protective device to midwater fishing gear or employ any modification to any gear that would, in effect, make it possible to fish for groundfish;

(c) Fish for, take, catch, harvest or land any groundfish during a closure under § 651.24, except to the extent allowed by that section;

(d) Fish for, take, catch, harvest or land any groundfish in excess of the fishing vessel's applicable catch limitation, if any, established by § 651.23;

(e) Fish for, catch, take, harvest or land any groundfish caught with nets having smaller than the minimum mesh size allowed by § 651.22 except as provided for under § 651.22(e);

(f) Discard, at sea, any groundfish;

(g) Use any vessel for taking, catching, harvesting or landing of any groundfish unless the vessel has a valid permit issued pursuant to this part, and the permit is on board the vessel;

(h) Fail to report to the Regional Director, within 15 days of any such change, any change in the information contained in a permit application for a vessel;

(i) Falsify or fail to make, keep, maintain, or submit any logbook, or other record or report required by this part;

(j) Refuse to permit an Authorized Officer, or any employee of the National Marine fisheries Service designated by the Regional Director to make such inspections, to inspect any logbooks or records relating to the taking, catching, harvesting, landing, purchase or sale of any groundfish;

(k) Make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, harvesting, landing, purchase, sale or transfer of any groundfish;

(l) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, or export any groundfish taken in violation of the Act, this part, or any other regulation promulgated under the Act;

(m) Fail to affix and maintain permanent or nonpermanent markings as required by § 651.6;

(n) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this part, or any other regulation promulgated under the Act;

(o) Forcibly assault, resist, oppose, impede, intimidate or interfere with any Authorized Officer in the conduct of any inspection or search described in paragraph (n) of this section;

(p) Resist a lawful arrest for any act prohibited by this part;

(q) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this part;

(r) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this Act;

(s) Fail to comply with enforcement and boarding procedures specified in § 651.8;

(t) Transfer directly or indirectly, or attempt to so transfer, any United States harvested fish to any foreign fishing vessel within the FCZ unless the foreign vessel has been issued a permit which authorizes the receipt by such vessel of United States harvested fish of the species concerned;

(u) Violate any other provision of this part, the Act, or any other regulation promulgated pursuant thereto.

§ 651.8 Enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to this part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, logbook, and catch for purposes of enforcing the Act and this part.

(b) *Signals.* Upon being approached by a Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Act, the operator of a fishing vessel shall be alert for signals conveying enforcement instructions. The following signals extracted from the International Code of Signals are among those which may be used:

(1) "L" meaning "You should stop your vessel instantly,"

(2) "SQ3" meaning "You should stop or heave to; I am going to board you," and

(3) "AA AA AA etc.," which is the call to an unknown station, to which the signaled vessel must respond by illuminating the vessel identification required by § 651.6(a).

(c) *Boarding.* A vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way so as to permit the Authorized Officer and his/her party to come aboard;

(2) Provide a ladder for the Authorized Officer and his/her party;

(3) When necessary to facilitate the boarding, provide a man rope, safety line and illumination for the ladder; and

(4) Take such other actions as are necessary to ensure the safety of the Authorized Officer and his/her party and to facilitate the boarding.

§ 651.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions of the Act, and to 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), and other applicable Federal law.

Subpart B—Management Measures

§ 651.20 General limitations.

(a) *Fishing year.* The fishing year for groundfish begins on October 1 and ends on September 30.

(b) *Headboat and charter boat quotas.* Quotas limiting the amount of groundfish which may be taken during the fishing year by headboats and charter boats are: For cod in the Gulf of Maine, 2,500 metric tons; for haddock in all areas, 2,000 metric tons.

(c) *Other quotas.* Quarterly and annual quotas limiting the amount of groundfish which may be taken by commercial and recreational vessels subject to this part are set forth in Appendix A to this part. The quotas for cod and haddock apply only to commercial fishing vessels. The quotas for yellowtail flounder apply to commercial and recreational fishing vessels.

(d) *Adjustment of quarterly quotas.* The Assistant Administrator may adjust the quarterly quotas set forth in Appendix A in the following circumstances:

(1) If a quarterly quota is not reached, to add the suplus onto quotas in subsequent quarters;

(2) If a quarterly quota is exceeded, to deduct the overage from quotas in subsequent quarters.

To the extent possible, adjustments shall be made within appropriate vessel classes.

§ 651.21 Closed areas.

(a) *General.* Except as allowed by paragraph (b) of this section during the months of March, April and May, no person may fish for, catch, take or harvest any groundfish within the following areas:

(1) An area known as Closed Area I bounded by straight lines connected by the following coordinates in the order stated:

42°10′ N., 69°55′ W., 41°10′ N., 69°10′ W.;
41°35′ N., 68°30′ W., 41°50′ N., 68°45′ W.;
41°50′ N., 69°00′ W., 42°10′ N., 69°55′ W.

(2) An area known as Closed Area II bounded by straight lines connected by the following coordinates in the order stated:

42°20′ N., 67°00′ W., 41°15′ N., 67°00′ W.;
41°15′ N., 65°40′ W., 42°00′ N., 65°40′ W.;
42°20′ N., 66°00′ W., 42°20′ N., 67°00′ W.

(b) *Exceptions.* Paragraph (a) of this section shall not apply to:

(1) Vessels that fish in Closed Area I with hooks having a gape of not less than 1.18 inches;

(2) Vessels that fish in either Closed Area I or II or both using only the following fishing gear:

(i) Pot gear designed and used to take lobster; or

(ii) Dredges designed and used to take scallops.

§ 651.22 Vessel class and gear limitations.

(a) *Vessel classes.* The following vessel classes are established:

(1) Mobile Gear:

(i) 0-60 gross registered tons.

(ii) 61-125 gross registered tons.

(iii) Over 125 gross registered tons.

(2) Fixed Gear.

(3) Charter boats and headboats.

(4) Recreational.

(b) *Trawl nets.* Except as provided in paragraph (e) of this section, the minimum mesh size for any trawl net used by a vessel subject to this part is 5⅛ inches in the cod end, and 4½ inches in the body of the net.

(c) *Gill nets.* Except as provided in paragraph (e) of this section, the minimum mesh size for any gill net used by a vessel subject to this part is 5½ inches.

(d) *Mesh measurements.* Mesh sizes are measured when wet after use by a wedge-shaped gauge having a taper of two centimeters in eight centimeters and a thickness of 2.3 millimeters, inserted into the meshes under pressure or pull of five kilograms. The mesh size of the body of the net shall be the average of the measurements of any series of 20 consecutive meshes. The cod end shall be measured in the same manner at least 10 meshes from the lacings, beginning at the after end and running parallel to the long axis.

(e) *Exceptions.* The mesh size limitations contained in paragraphs (b) and (c) of this section do not apply to a vessel which can demonstrate that its catch or groundfish for the entire trip:

(1) Is less than each of the following amounts:

(i) The larger of 1,000 pounds or 10 percent of the total fish landed, by weight, for any groundfish species;

(ii) The amount allowed under any applicable catch limitation established under § 651.23;

(iii) During a closure, the amount allowed under incidental catch provisions contained in § 651.24(d); and

(2) Includes at least 2,000 pounds of fish other than groundfish caught on the same trip (this subparagraph (2) does not apply to vessels in the northern shrimp fishery).

§ 651.23 Catch limitations.

(a) *General.* (1) Appendix B to this part sets forth the catch limitations which govern fishing for groundfish. For any fishing trip, a vessel is entitled to the catch limitation for only one vessel class.

(2) A vessel which fishes for cod and haddock in both management areas (Gulf of Maine, Georges Bank and South) during a week may land only

the larger of the catch limitations from either area. A vessel may not land catch limitations from both areas.

(3) A vessel which fishes for yellowtail flounder in both management areas (east of 69° W. long., west of 69° W. long.) during a week or trip may land only the larger of the catch limitations from either area. A vessel may not land catch limitations from both areas.

(b) *Overruns.* A mobile-gear vessel may overrun its applicable catch limitation for cod and haddock, as set forth in Appendix B. The amount of any overrun will be deducted from the vessel's limitation for the following week. No overruns are allowed for fixed-gear vessels or for yellowtail flounder.

(c) *Fishing weeks.* For purposes of this section, a vessel which is at sea during more than one fishing week may count its fish against any fishing week during which fishing was conducted on that trip. However, a vessel whose logbook fails to indicate when fishing was conducted shall have its fish counted against the fishing week in which they were landed.

(d) *Cod and haddock.* The catch limitations in Appendix B govern the amount of cod and haddock which may be caught, taken, harvested or landed by domestic commercial fishermen using mobile or fixed gear during a fishing week.

(e) *Yellowtail flounder.* The catch limitations in Appendix B govern the amount of yellowtail flounder which may be caught, taken, harvested or landed by domestic commercial fishermen during a trip or during a fishing week, whichever time period is longer.

(f) *Adjustments.* (1) The Assistant Administrator shall, upon a finding that any vessel class in any area is likely to exceed or fall short of its quarterly quota for any species, adjust the limitations and overrun allowances set forth in Appendix B for any or all such species and vessel classes, if he finds such adjustment necessary to achieve any of the following purposes:

(i) To spread fishing effort over the entire quarter;

(ii) To reduce the need for quarterly or annual closures;

(iii) To allow each of the vessel classes to harvest its historic percentage of the catch.

(2) In making the findings and adjustments referred to in paragraph (f)(1) of this section the Assistant Administrator shall consider:

(i) Landings for the current or previous quarters;

(ii) Projected harvests;

(iii) Geographic and seasonal availability of fish;

(iv) Traditional and anticipated fishing patterns;

(v) Number of vessels of each class in the fishery;

(vi) Capability of vessels to fish in other locations or for other species,

(vii) Status of unregulated species in the trawl fishery; and

(viii) Incidental catch of cod, haddock, and yellowtail flounder during fishing for unregulated species.

[44 FR 887, Jan. 3 1979, as amended at 44 FR 42980, July 23, 1979; 44 FR 55886, Sept. 28, 1979]

§ 651.24 Closures.

(a) *Projected catch.* The Regional Director shall monitor catches and landings of groundfish, and other data, and shall, on or about the 1st and 16th day of each month, project a date when the allocation of any species of groundfish, by vessel class, less an anticipated amount of such species to be taken incidentally pursuant to paragraph (d) of this section shall have been taken for each relevant area and quarterly or annual period. If the Regional Director reasonably expects that adjustments to quarterly quotas under § 651.20(d) will be made in the following quarter, he may anticipate those adjustments in projecting closure dates.

(b) *Recommendation of closure.* As soon as possible after projecting a closure date pursuant to paragraph (a) of this section, if such closure date is within 30 days of the projection, the Regional Director shall recommend to the Assistant Administrator that the groundfish fishery be closed on that date for the relevant species, vessel class, area, and quarter or fishing year. The Regional Director may, based upon subsequent information, rescind or revise such recommendation at any time before the Assistant Administrator has taken action pursuant to paragraph (c) of this section.

(c) *Notice of closure*—(1) The Assistant Administrator may, by publication of a notice in the FEDERAL REGISTER, close the fishery for groundfish for the relevant species, vessel class, and area, on the date recommended under paragraph (b) of this section, or on such other date as the Assistant Administrator determines will prevent the quarterly or annual quota from being exceeded.

(2) The Assistant Administrator shall, by publication of a notice in the FEDERAL REGISTER, close the fishery for groundfish for the relevant species, vessel class, and area, on the date recommended under paragraph (b) of this section, or on such other date as the Assistant Administrator determines will prevent the annual quota from being exceeded.

(d) *Incidental catch.* During any closure, any vessel in the following vessel classes to which the closure applies may catch, take, harvest or land no more than the following amounts of the species to which the closure applies:

(1) Cod and haddock:

0-60 GRT—500 pounds or 4 percent by weight of all fish on board, whichever is the lesser amount, per trip.
61-125 GRT—1,000 pounds or 4 percent by weight of all fish on board, whichever is the lesser amount, per trip.
Over 125 GRT—2,000 pounds or 4 percent by weight of all fish on board, whichever is the lesser amount, per trip.
Fixed gear—500 pounds or 4 percent by weight of all fish on board, whichever is the lesser amount, per trip.

(2) Yellowtail flounder:

All vessels—500 pounds or 4 percent by weight of all fish on board, whichever is the lesser amount, per trip.

[44 FR 887, Jan. 3, 1979, as amended at 44 FR 55886, Sept. 28, 1979]

APPENDIX A—QUARTERLY QUOTAS

[In metric tons]

	Oct. 1-Dec. 31	Jan. 1-Mar. 31	Apr. 1-June 30	July-Sept. 30	Annual
Cod—Gulf of Maine (Commercial):					
Mobile Gear:					
0-60 GRT	921	1,106	1,265	757	4,049
61-125 GRT	542	438	415	420	1,815
Over 126 GRT	285	270	88	88	731
Fixed Gear	502	401	1,022	980	2,905
Total	2,250	2,215	2,790	2,245	9,500
Cod—Georges Bank and South (Commercial):					
Mobile Gear					
0-60 GRT	675	798	873	491	2,837
61-125 GRT	2,393	2,109	3,006	1,832	9,340
Over 126 GRT	3,983	2,865	3,266	3,184	13,298
Fixed Gear	544	418	1,110	2,073	4,145
Total	7,595	6,190	8,255	7,580	29,620
Haddock—Gulf of Maine (Commercial):					
Mobile Gear:					
0-60 GRT	442	353	1,114	484	2,393
61-125 GRT	631	506	443	388	1,968
Over 126 GRT	431	489	201	208	1,329
Fixed Gear	256	507	642	480	1,885
Total	1,760	1,855	2,400	1,560	7,575
Haddock—Georges Bank and South (Commercial):					
Mobile Gear					
0-60 GRT	129	61	225	236	651
61-125 GRT	976	994	2,675	1,537	6,182
Over 126 GRT	1,701	2,092	3,676	2,584	10,053
Fixed Gear	49	108	124	508	789
Total	2,855	2,355	6,700	4,865	17,675

APPENDIX A—QUARTERLY QUOTAS—Continued

[In metric tons]

	Oct. 1-Dec. 31	Jan. 1-Mar. 31	Apr. 1-June 30	July-Sept. 30	Annual
Yellowtail Flounder—East of 69° W (commercial and recreational):					
All vessel classes	920	1,705	720	1,655	5,000
Yellowtail flounder—West of 69° W (commercial and recreational):					
All vessel classes	1,295	1,555	1,120	1,030	5,000

[46 FR 39830, Aug. 5, 1981]

APPENDIX B—CATCH LIMITATIONS

Vessel class	Gulf of Maine	Georges Bank and south
Cod (pounds per week) [1]		
Mobile gear:		
0-60 GRT	2,000	6,500
61-125 GRT	4,000	13,000
Over 125 GRT	5,500	15,000
Fixed gear	4,500	14,500
Haddock (pounds per week) [1]		
Mobile gear:		
0-65 GRT	5,000	7,000
61-125 GRT	7,000	14,000
Over 125 GRT	10,000	20,000
Fixed gear	16,000	16,000

Vessel class	West of 69° W. longitude	East 69° W. longitude
Yellowtail flounder: [2]		
0-60 GRT	5,000	5,000
61-125	5,000	5,000
Over 125 GRT	5,000	5,000

[1] No overruns are allowed. A vessel is allowed to land only the larger of the limits from either management area.

[2] Pounds per week or per trip, whichever is the longer time period. No overruns are allowed. In no instance may a vessel land more than 5,000 pounds of yellowtail flounder from the FCZ per week or per trip, whichever is longer, regardless of whether that vessel fished east of 69° W., west of 69° W., or in both areas.

[46 FR 30348, June 8, 1981]

PART 652—ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERIES

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 45 FR 788, Jan. 3, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 652.1 Purpose.

This part regulates fishing for surf clams (*Spisula solidissima*) and ocean quahogs (*Arctica islandica*) in the Atlantic Ocean Fishery Conservation Zone (FCZ) from January 1, 1980 to December 31, 1981.

§ 652.2 Definitions.

In addition to the definitions in the Act, and unless the context requires otherwise, the terms used in this Part 652 shall have the following meaning (some definitions in the Act have been repeated here to aid fishermen in understanding the regulations).

(a) *Act* means the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 *et seq.*, as amended.

(b) *Assistant Administrator* means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

(c) *Authorized officer* means:

(1) Any comissioned, warrant, or petty officer of the Coast Guard;

(2) Any certified Enforcement or Special Agent of the NMFS;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce or the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

(d) *Bushel* means a standard unit of measure presumed to hold 1.88 cubic feet of surf clams or ocean quahogs in the shell.

(e) *Cage* means a standard unit of measure presumed to hold 32 bushels of surf clams or ocean quahogs in the shell. The outside dimensions of a standard cage generally are 3′ wide, 4′ long and 5′ high.

(f) *Directed fishery* means, with respect to any species, a fishery conducted for the purpose of catching that species.

(g) *Fish* means any finfish, mollusks (including surf clams and ocean quahogs), crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

(h) *Fishery Conservation Zone (FCZ)* means the zone contiguous to the territorial sea of the U.S., the inner boundary of which is a line coterminous with the seaward boundary of each of the coastal States and the outer boundary of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

(i) *Fishing* means:

(1) The catching, taking or harvesting of fish;

(2) The attempted catching, taking or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2) or (3) of this definition.

The term "fishing" does not include any scientific research activity which is conducted by any scientific research vessel.

(j) *Fishing trip* means a departure from port, transit to the fishing grounds, fishing, and discharge of any part of the catch on board.

(k) *Fishing vessel* means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(1) Fishing; or

(2) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(l) *Mid-Atlantic Area* means that portion of the FCZ south of the line that begins at 41°18′16.249″ North latitude and 71°54′28.477″ West longitude and proceeds S 37°22′32.75″ E to the point of intersection with the outward boundary of the FCZ.

(m) *New England Area* means that portion of the FCZ north of the line that begins at 41°18′16.249″ North latitude and 71°54′28.477″ West longitude and proceeds S 37°22′32.75″ E to the point of intersection with the outward boundary of the FCZ.

(n) *NMFS* means the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration.

(o) *Operator* means, with respect to any vessel, the master or other individual on board and in charge of that vessel.

(p) *Owner* means, with respect to any vessel: (1) Any person who owns that vessel in whole or in part; (2) any charterer of the vessel, whether bareboat, time, or voyage; or (3) any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel.

(q) *Person* means any individual, corporation, partnership, association, or other entity.

(r) *Regional Director* means the Regional Director, Northeast Region, NMFS, Federal Building, 14 Elm Street Gloucester, MA 01930. Telephone 617-281-3600.

(s) *Secretary* means the Secretary of Commerce or the designee of the Secretary.

(t) *Vessel of the United States* means:

(1) A vessel documented or numbered by the Coast Guard under U.S. law; or

(2) A vessel, under five net tons, which is registered under the laws of any State.

§ 652.3 Foreign fishing.

Fishing for surf clams or ocean quahogs in the FCZ by any vessel other than a vessel of the United States is prohibited.

§ 652.4 Permits.

(a) *General.* A vessel owner or operator must obtain a permit in order to:

(1) Conduct a directed fishery for surf clams or ocean quahogs within the FCZ, or

(2) Land or transfer to another vessel any surf clams or ocean quahogs or part thereof caught within the FCZ.

(b) *Eligibility*—(1) *Surf clams.—New England and Mid-Atlantic.* A vessel is eligible for a surf clam permit permitting harvest of surf clams in both the New England and Mid-Atlantic Areas if it meets any of the following criteria:

(i) The vessel has landed surf clams in the course of conducting a directed fishery for surf clams between November 18, 1976, and November 17, 1977; or

(ii) The vessel was under construction for, or was being rerigged for, use in the directed fishery for surf clams on November 17, 1977. For the purpose of this paragraph (b)(1)(ii), "under construction" means that the keel had been laid, and "being re-rigged" means physical alteration of the vessel or its gear had begun to transform the vessel into one capable of fishing commercially for surf clams; or

(iii) The vessel is replacing a vessel of substantially similar harvesting capacity which involuntarily left the surf clam fishery during the moratorium, and both the entering and replaced vessels are owned by the same person.

(2) *Surf clams—New England only.* Any vessel of the United States is eligible for a permit allowing it to harvest surf clams in the New England Area only.

(3) *Ocean quahogs.* Any vessel of the United States is eligible for a permit allowing it to harvest ocean quahogs only.

(c) *Application.* Permit applications may be obtained by contacting the Regional Director. The owner or operator may apply for a permit by submitting an application form supplied by the Regional Director containing the following information:

(1) Names, mailing addresses, and telephone numbers of the owner and operator;

(2) The name of the vessel;

(3) The vessel's United States Coast Guard documentation number or State license number;

(4) Engine and pump horsepower;

(5) Homeport of the vessel;

(6) Directed fishery or fisheries;

(7) Fish hold capacity (in "cages" or bushels);

(8) Dredge size and number of dredges;

(9) Amount of surf clams and ocean quahogs landed between November 18, 1976 and November 17, 1977 (in bushels, if applicable);

(10) Number of fishing trips between November 18, 1976 and November 17, 1977;

(11) Date of beginning of construction or re-rigging (if applicable);

(12) Signature of the owner or operator; and

(13) Any other information which may be necessary for the issuance or administration of the permit.

(d) *Issuance.* The Regional Director shall issue a permit to each eligible vessel for which an application is submitted. The eligibility of a vessel to fish for surf clams will be determined consistent with this section. There will be no fee for the initial permit. A lost or mutilated permit will be replaced at a cost of $25.

(e) *Appeal of denial of permit.* (1) Any applicant denied a permit by the Regional Director may appeal to the Assistant Administrator for review of the denial. Any such appeal must be in writing. Any of the following grounds may form the basis for review:

(i) Applicant believes denial was in error;

(ii) Applicant was prevented by circumstances beyond his control from meeting relevant criteria;

(iii) Applicant has new or additional information which might change the initial decision; or

(iv) Applicant can show that significant and unusual hardship will result from the denial.

(2) The appeal may be presented, at the option of the applicant, at a hearing before a person appointed by the Assistant Administrator to hear the appeal.

(3) The decision of the Assistant Administrator shall be the final decision of the Department of Commerce.

(f) *Transfer.* A permit is valid only for the vessel for which it is issued.

(g) *Display.* The permit must be carried, at all times, on board the vessel for which it is issued, and must be maintained in legible condition. The permit, the vessel, its gear and catch shall be subject to inspection upon request of any authorized officer.

(h) *Expiration.* Except as provided in paragraph (h)(2) of this section, a permit shall expire:

(1) When the owner or operator retires the vessel from the fishery (it shall be a rebuttable presumption that failure to land any surf clams or ocean quahogs for 52 consecutive weeks constitutes retirement from the fishery) or

(2) When the ownership of the vessel changes; however, the Regional Director may authorize continuation of a vessel permit for the surf clam fishery if the new owner so requests and the vessel meets the relevant criteria of eligibility set forth in § 652.4(b). Applications for continuation of a permit must be addressed to the Regional Director.

(i) *Sanctions.* Subpart D of 50 CFR Part 621 (Civil Procedures) shall govern the imposition of permit sanctions against a permit issued under this part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the permitted vessel is used in the commission of an offense prohibited by the act or these regulations; or if a civil penalty or criminal fine imposed under the Act, and pertaining to a permitted vessel, is not paid.

§ 652.5 Recordkeeping and reporting requirements.

(a) *Dealers*—(1) *Weekly report.* Any person who buys surf clams or ocean quahogs from a fishing vessel subject to these regulations shall provide at least the following information to the Regional Director on a weekly basis, on forms supplied by the Regional Director:

(i) Name and mailing address of dealer or processing plant;

(ii) Name and permit number of the vessel from which surf clams or ocean quahogs are landed or received;

(iii) Dates of purchases;

(iv) Number of bushels purchased, by species;

(v) Price per bushel, by species; and

(vi) Meat yield per bushel, by species.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section shall also provide the following information to the Regional Director on an annual basis, on forms supplied by the Regional Director:

(i) Number of dealer or processing plant employees during each month of the year just ended;

(ii) Number of employees engaged in production of processed surf clam and ocean quahog products, by species, during each month of the year just ended;

(iii) Total payroll of those employees in paragraph (a)(2)(ii) of this section during each month of the year just ended;

(iv) Plant capacity to process surf clams and ocean quahog shellstock, or to process surf clam and ocean quahog meats into finished products, by species; and

(v) An estimate, for the next year, of the capacities described in paragraph (a)(2)(iv) of this section.

If the capacities described in paragraph (a)(2)(iv) of this section increase or decrease more than ten percent during any year, the processor shall promptly notify the Regional Director of the change in capacity.

(3) *At-sea activities.* All persons purchasing, receiving, or processing surf clams or ocean quahogs at sea for transport to any port of the United States must submit information identical to that required by paragraphs (a)(1) and (2) of this section and provide those reports to the Regional Director on the same frequency basis.

(b) *Owners and operators*—(1) *Daily fishing log.* The owner or operator of any vessel conducting any fishing operations subject to these regulations shall maintain, on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Director showing at least:

(i) Name and permit number of the vessel;

(ii) Total amount in bushels of each species taken;

(iii) Date(s) caught;

(iv) Time at sea;

(v) Duration of fishing time;

(vi) Locality fished;

(vii) Crew size;

(viii) Crew share by percentage;

(ix) Landing port;

(x) Date sold;

(xi) Price per bushel; and

(xii) Buyer.

(2) *When to fill in log.* To the extent possible, owners or operators shall fill in such logbooks before landing any surf clams or ocean quahogs at the end of any fishing trip. All logbook information required in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* The owner or operator shall make the logbook available for inspection by an authorized official at any time during or after a trip.

(4) *Record retention.* For one year after the date of the last entry in the log, the owner or operator shall keep each logbook at the owner or operator's principal place of business.

(5) *Weekly reports.* The owner or operator shall submit weekly reports to the Regional Director, on forms supplied by the Regional Director. If no fishing trip is made during a week, a report so stating must be submitted.

(6) *Annual reports.* All persons required to submit reports under paragraph (b) of this section shall submit annually to the Regional Director, on forms supplied by the Regional Director, at least the following information relating to vessel characteristics: name of the vessel, vessel's U.S. Coast Guard documentation number or State license number, engine and pump horsepower, homeport of vessel, hold capacity (in bushels or cages), and dredge size and number of dredges.

§ 652.6 Vessel identification.

(a) *Official number.* Each fishing vessel 25 feet in length or longer subject to these regulations shall display its offical number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft. Vessels under 25 feet in length do not need to display any number. The official number is the documentation number issued by the U.S. Coast Guard or the certificate of number issued by a State or the Coast Guard for undocumented vessels.

(b) *Markings.* Markings shall be at least eighteen (18) inches in height, legible, and of a color that contrasts with the background.

(c) *Duties of the operator.* The operator of each vessel shall:

(1) Keep the required identifying markings clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging or its fishing gear obstructs the view of the markings from an enforcement vessel or aircraft.

(d) *New Jersey vessels.* Instead of complying with paragraphs (a) and (b) of this section, vessels licensed under New Jersey law may use the appropriate vessel identification markings established by that State.

§ 652.7 Prohibitions.

(a) No person shall catch and retain on board any surf clams or ocean quahogs:

(1) During closed seasons; or

(2) In closed areas as specified in these regulations; or

(3) On days of the week on which fishing for these species is not permitted.

(b) No person shall fish for surf clams except during the authorized time period(s) assigned to the vessel he is operating.

(c) No person shall catch and retain on board any surf clams on other than an authorized surf clam fishing trip.

(d) No person shall possess, have custody of or control of, ship transport, offer for sale, deliver for sale, sell, purchase, import, export, or land, any surf clams, ocean quahogs, or parts thereof, which were taken in violation of the Act, these regulations, or any regulations issued under the Act.

(e) No person engaged in the surf clam or ocean quahog fisheries as an owner or operator, or as a dealer, processor, buyer or receiver shall unload or cause to be unloaded, or sell or buy, any surf clams or ocean quahogs whether on land or at sea, without preparing and submitting the documents required by § 652.5.

(f) No person shall:

(1) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection, no matter where that vessel may be located, in connection with the enforcement of the Act, these regulations, or any other regulations issued under the Act;

(2) Forcibly assault, resist, oppose, impede, intimidate or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (f)(1) of this section;

(3) Resist a lawful arrest for any act prohibited by these regulations; or

(4) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by these regulations.

(g) No person shall use any fishing vessel to engage in fishing without a permit, or after the revocation, or during the period of suspension, of an applicable permit issued under § 652.4.

(h) No person shall alter, erase or mutilate: (1) any permit issued under § 652.4; or (2) any letter of authorization issued under § 652.22.

(i) No person shall violate any other provision of the Act, these regulations, or any applicable permit issued under § 652.4.

(j) No person shall possess onboard any vessel or shall land any surf clams in violation of the size limit provision contained at § 652.25.

[45 FR 788, Jan. 3, 1980, as amended at 46 FR 37052, July 17, 1981]

Effective Date Note: Section 652.7(j) expires Oct. 23, 1981 (see 46 FR 44988, Sept. 9, 1981).

§ 652.8 Facilitation of enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to these regulations shall immediately comply with instructions issued by any authorized officer to facilitate safe boarding and inspection of the vessel, its gear, logbook and catch for purposes or enforcing the Act and these regulations.

(b) *Signals.* Upon being approached by a Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Act, the operator of the fishing vessel shall be alert for signals conveying enforcement instructions. The following signals extracted from the International Code of Signals are among those which may be used:

(1) "L" meaning "You should stop your vessel instantly";

(2) "SQ3" meaning "You should stop or heave to; I am going to board you";

(3) "AA AA AA etc." which is the call to an unknown station; to which the signalled vessel should respond by illuminating the vessel identification required by § 652.6;

(c) *Boarding.* A vessel signalled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the authorized officer and his party to come aboard;

(2) Provide a safe ladder for the authorized officer and the boarding party;

(3) When necessary to facilitate the boarding, provide a man rope, safety line and illumination for the ladder; and

(4) Take such other actions as necessary to ensure the safety of the authorized officer and his party and to facilitate the boarding.

§ 652.9 Penalties.

(a) Any person or fishing vessel found to be in violation of these regulations, including the logbook and other reporting requirements, shall be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, in 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), and in other applicable law.

(b) The Assistant Administrator may revoke, modify, or suspend the permit of a vessel whose owner or operator violates any provisions of the Act, these regulations, or any applicable permit.

Subpart B—Management Measures

§ 652.21 Catch quotas.

(a) *Surf clams: Mid-Atlantic Area.* The amount of surf clams which may be caught in the mid-Atlantic Area by fishing vessels subject to these regulations is, for the applicable quarter:

	Bushels
January 1 to March 31	400,000
April 1 to June 30	500,000
July 1 to September 30	500,000
October 1 to December 31	400,000
Annual quota	1,800,000

(1) *Adjustments.* If the actual catch of surf clams in the Mid-Atlantic Area in any quarter falls more than 5,000 bushels short of the specified quarterly quota, the Regional Director shall add the amount of the shortfall to the next succeeding quarterly quota. If the actual catch of surf clams in any quarter exceeds the specified quarterly quota, the Regional Director shall subtract the amount of the excess from the next succeeding quarterly quota.

(2) *Notice.* The Assistant Administrator shall publish a notice in the FEDERAL REGISTER whenever the Regional Director adjusts the quarterly quota of surf clams under paragraph (a)(1) of this section.

(b) *Surf clams: New England Area.* The amount of surf clams which may be caught in the New England Area by fishing vessels subject to these regulations is, for each year, 25,000 bushels.

(c) *Ocean Quahogs.* The annual quota for ocean quahogs is 3,500,000 bushels for 1980 and 4,000,000 bushels for 1981. If necessary, the Regional Director may establish quarterly quotas for ocean quahogs. In that event, the Assistant Administrator shall publish notice of such quarterly quotas in the FEDERAL REGISTER. In the event that the Regional Director establishes quarterly quotas for ocean quahogs, if the actual catch of ocean quahogs falls more than 5,000 bushels short of the specified quarterly quota, the Regional Director shall add the amount of the shortfall to the next succeeding quarterly quota. If the actual catch of ocean quahogs in any quarter exceeds the specified quarterly quota, the Regional Director shall subtract the amount of the excess from the next succeeding quarterly quota.

(d) *Closure.* If the Regional Director determines (based on logbook reports, processor reports, vessel inspections, or other information) that the quota for surf clams or ocean quahogs for any time period indicated in § 652.21 will be exceeded, the Assistant Administrator shall publish a notice in the FEDERAL REGISTER stating the determination and stating a date and time for closure of the surf clam or ocean quahog fishery for the remainder of the time period. The Regional Director shall send notice of the action to each surf clam or ocean quahog processor and to each surf clam or ocean quahog vessel owner or operator.

(e) *Presumption.* The presence of surf clams or ocean quahogs aboard any fishing vessel or the presence of any part of the vessel's gear in the water more than 12 hours after a fishery closure announcement becomes effective under paragraph (d) of this section shall be prima facie evidence that such clams or quahogs were taken in violation of these regulations.

§ 652.22 Effort restrictions.

(a) *Surf clams. Mid-Atlantic Area.* (1) Fishing for surf clams shall be permitted only during the period beginning 5:00 PM Sunday and ending 5:00 PM Thursday.

(2) The Regional Director will notify each owner or operator of a fishing vessel engaged in the surf clam fishery in the Mid-Atlantic Area concerning the allowable combinations of fishing periods for varying levels of allowable weekly fishing time. The vessel owner or operator shall send the Regional Director written notice of the owner or operator's selection of allowable surf clam fishing periods for that vessel. All selections must be received by the Regional Director not later than 15 days before the beginning of the quarter for which the selection is to be effective. The Regional Director will send a letter of authorization to each owner or operator, stating the periods during which the vessel is authorized to fish for surf clams. The letter of authorization shall be kept aboard the vessel at all times. Fishing shall be conducted only during the times and under those conditions authorized by the Regional Director on the letter of authorization. Requests for changes in a vessel's authorized fishing periods will not be considered once a quarter has begun. All requests for changes in authorized fishing periods for a subsequent quarter must be received by the Regional Director 15 days prior to the beginning of that quarter. Fishing for any part of an authorized period will be counted as one day of fishing. In this paragraph, "fishing" means the actual or attempted catching of fish, but not activities in preparation for fishing, such as traveling to or from the fishing grounds. The presence of a vessel's fishing gear in the water at a time which is more than one-half hour before the beginning, or one-half hour after the end, of the vessel's authorized fishing period shall be prima facie evidence that the vessel is fishing in violation of these regulations.

(3) Each quarter will begin with each vessel limited to 24 hours of fishing time, to allow fishing for surf clams to be conducted throughout the entire quarter without exceeding the quota for that quarter (as adjusted under § 652.21(a)(1). All authorized fishing periods will end at 5:00 PM.

(4) If, on review of the available information and public comment, including current and expected levels of fishing effort, the Regional Director determines during any quarter that the quarterly quota of surf clams (as adjusted under § 652.21(a)(1)) will be exceeded, the number of hours per week during which fishing for surf clams is permitted may be reduced to avoid prolonged closure of the fishery.

(5) If, on review of the available information and public comment, including current and expected levels of fishing effort, the Regional Director determines during any quarter that the quarterly quota of surf clams (as adjusted under § 652.21(a)(1)) will not be harvested, and that the catch rate has not diminished as a result of a decline in abundance of stocks of surf clams, the Regional Director may increase the number of hours per week during which fishing for serf clams is permitted to facilitate the harvest of the full quarterly quota.

(6) The Assistant Administrator shall publish a notice in the FEDERAL REGISTER of any reduction or increase in hours per week during which fishing for surf clams is permitted. The reduction or increase may take effect immediately upon publication in the FEDERAL REGISTER. The Regional Director shall also send notice of the change to each surf clam or ocean quahog processor in the fishery, and to each surf clam or ocean quahog vessel owner or operator.

(7) During the months of December, January, February, and March, fishermen may claim a make-up period if small craft warnings are posted in the "key port" of the geographic zone from which the vessel fishes. Vessels fishing from ports in New Jersey and northward are in Zone 1. The "key port" of Zone 1 is Wildwood—Cape May, New Jersey. Vessels fishing from ports on the Delmarva Peninsula and southward are in Zone 2. The "key port" for Zone 2 is Chincoteague, Virginia.

(i) If small craft warnings are posted in the key port of the zone from which the vessel fishes, within four hours before the vessel's scheduled authorized fishing period is to start, then the vessel may elect not to fish during the scheduled authorized fishing period and may instead claim a make-up period.

(A) To claim the make-up period, the vessel owner or operator must contact the NMFS *before* the scheduled authorized fishing period starts. The Regional Director will notify each vessel owner or operator in writing as to the procedure to follow in contacting NMFS.

(B) The make-up period shall be equal in length to the scheduled authorized fishing period, and shall begin 24 hours after the scheduled beginning of said period, except that if the make-up period could not then be completed before the end of the fishing week on Thursday at 5 p.m., then the make-up period shall begin 96 hours after the beginning of the scheduled authorized fishing period.

(C) Before using this make-up day provision, each vessel owner must notify the Regional Director, in writing, of the port from which the vessel fishes. If that port changes, the vessel owner shall promptly notify the Regional Director of the change, in writing.

(D) Any vessel which uses a make-up period without claiming it under this procedure, or which fishes during a scheduled authorized fishing period for which it has claimed a make-up period, shall be liable to forefeit its use of the make-up provision in the future; the vessel and its owner or operator also may be subject to other penalties as prescribed in § 652.9 of these regulations.

(8) *Presumption.* The presence of surf clams aboard any fishing vessel engaged in the surf clam fishery, or the presence of any part of a vessel's gear in the water more than 12 hours after a weekly closure occurs under this paragraph (a), shall be prima facie evidence that such surf clams were taken in violation of these regulations.

(b) *Surf clams. New England Area.* (1) Fishing for surf clams shall be permitted seven days per week.

(2) When 50 percent of the quota of surf clams indicated in § 652.21(b) has been caught, the Regional Director shall, on review of the available information and public comment, determine whether the total catch of surf clams during the remainder of the year will exceed the annual quota. If the Regional Director determines that the quota probably will be exceeded, the Regional Director may reduce the number of days per week, or establish authorized periods, during which fishing for surf clams is permitted.

(3) The Assistant Administrator shall publish a notice in the FEDERAL REGISTER of any reduction in days per week during which fishing for surf clams is permitted. The reduction may be effective immediately upon publication in the FEDERAL REGISTER. The Regional Director shall also send notice of any reduction to each surf clam or ocean quahog processor in the fishery and to each surf clam or ocean quahog vessel owner or operator.

(c) *Ocean Quahogs.* (1) Fishing for ocean quahogs shall be permitted seven days per week.

(2) When 50 percent of the quota of ocean quahogs for any time period indicated in § 652.21(c) has been caught, the Regional Director shall, on review of the available information and public comment, determine whether the total catch of ocean quahogs during the applicable time period will exceed the quota for that time period. If the Regional Director determines that the quota will be exceeded, the Regional Director may reduce the number of days per week during which fishing for ocean quahogs is permitted.

(3) The Assistant Administrator shall publish a notice in the FEDERAL REGISTER of any reduction in the days per week during which fishing for ocean quahogs is permitted. The reduction may be effective immediately upon publication in the FEDERAL REGISTER. The Regional Director shall also send notice of any reduction to each surf clam or ocean quahog processor in the fishery and to each surf clam or ocean quahog vessel owner or operator.

§ 652.23 Closed areas.

(a) *Areas closed because of environmental degradation.* Certain areas are closed to all surf clam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Assistant Administrator determines that the adverse environmental conditions have been corrected. If additional areas, due to the presence or introduction of hazardous materials or pollutants, are identified as being contaminated by the Food and Drug Administration, they may be closed by the Assistant Administrator after public hearing is held to discuss and assess the effects of such a closure. The areas currently closed are described as follows:

(1) A waste disposal site known as the "Boston Foul Ground" and located at 45°25′36″ N latitude and 70°35′00″ W longitude with a radius of one nautical mile in every direction from that point.

(2) A polluted area and waste disposal site known as the "New York Bight Closure" and located at 40°25′04″ N latitude and 73°43′38″ W longitude and with a radius of six nautical miles in every direction from that point, extending northwestward from a point on the arc at 40°31′00″ N latitude and 73°43′38″ W longitude directly toward Atlantic Beach Light in New York to the limit of state territorial waters of New York; and extending southwestward from a point on the arc at 40°19′48″ N latitude and 73°45′42″ W longitude to a point at the limit of the state territorial waters of New Jersey at 40°14′00″ N latitude and 73°55′42″ W longitude.

(3) A pair of areas used for the disposal of chemicals and sewage sludge known as the "Philadelphia and Dupont Closure" and located at 38°23′15″ N latitude and 74°14′45″ W longitude; and 38°32′30″ N latitude and 74°20′00″ W longitude with a radius of four and three-quarters nautical miles in every direction from those two points.

(4) A toxic industrial dump site known as the "106 Dumpsite" and located between 38°40′00″ N latitude and 39°00′00″ N latitude and between 72°00′00″ W longitude and 72°30′00″ W longitude.

(b) *Areas closed because of small surf clams.* Areas may be closed to surf clam and ocean quahog fishing upon a determination by the Regional Director (based on logbook entries, processors' reports, survey cruises, or other information) that the area contains surf clams of which:

(1) 60 percent or more are smaller than 4½ inches in size, and;

(2) not more than 15 percent are larger than 5½ inches in size. (Sizes shall be measured at the longest dimension of the surf clam.)

(c) *Notice.* The Assistant Administrator shall publish notice of any area closed under paragraphs (a) or (b) of this section in the FEDERAL REGISTER. The Regional Director shall send notice of the closed area to each surf clam or ocean quahog processor and to each surf clam or ocean quahog vessel owner or operator.

(d) *Presumption.* The presence of surf clams or ocean quahogs aboard any fishing vessel engaged in those fisheries, or the presence of any part of the vessel's gear in the water, in closed areas shall be prima facie evidence that such clams or quahogs were taken in violation of these regulations.

[45 FR 788, Jan. 3, 1980; 45 FR 72196, Oct. 31, 1980]

§ 652.24 Vessel moratorium.

The moratorium that became effective on November 17, 1977, prohibiting the entry of additional vessels into the surf clam fishery, shall remain in effect in the Mid-Atlantic Area until December 31, 1981, unless the Secretary determines, after public hearings and consultation with the Mid-Atlantic, New England and South Atlantic Fishery Management Councils, to terminate the moratorium at an earlier date. The moratorium no longer applies to vessels fishing in the New England Area.

§ 652.25 Mid-Atlantic area surf clam size limit.

(a) A minimum size limit for surf clams of 5½ inches in length is imposed on the Mid-Atlantic Area fishery with the following exceptions:

(1) Ten percent of all cages, to the nearest whole cage on board the vessel (or at least one cage), can be withheld by the operator from inspection by an enforcement officer; and

(2) As many as ten percent of, or 240, clams in each inspected cage may be less than 5½ inches.

(b) Length is measured at the longest dimension of the surf clam.

[46 FR 37053, July 17, 1981]

Effective Date Note: Section 652.25 expires Oct. 23, 1981 (see 46 FR 44988, Sept. 9, 1981).

PART 653—ATLANTIC HERRING FISHERY

Subpart A—General Provisions

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Authority: 16 U.S.C. 1801 *et seq.*

Source: 45 FR 52812, Aug. 8, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 653.1 Purpose and scope.

(a) The regulations in this part implement the Fishery Management Plan for the Atlantic Herring Fishery of the Northwest Atlantic, which was prepared and adopted by the New England Fishery Management Council and approved by the Assistant Administrator. They govern fishing for adult Atlantic herring by fishing vessels of the United States within that portion of the Atlantic Ocean over which the United States exercises exclusive fishery management authority.

(b) These regulations do not limit harvests of Atlantic herring in the territorial waters of any State. Harvests from State waters, however, are deducted from the seasonal catch quotas provided for in these regulations.

§ 653.2 Definitions.

In addition to the definitions in the Act, the terms used in this part shall have the following meanings:

Act means the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration, Department of Commerce, or an individual to whom appropriate authority has been delegated.

Atlantic herring or *herring* means *Clupea harengus,* three years of age and older.

Authorized Officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) An certified enforcement officer or special agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Carrier vessel means any vessel which only transports Atlantic herring between another fishing vessel and the shore and does not purchase or sell herring.

Catch, take, or harvest includes, but is not limited, to, any activity which results in mortality to any herring or in bringing any herring on board a vessel.

Discard means to throw away, cast back, or return to the sea any fish that has been caught. The removal and release of a live fish before that fish is brought on board a vessel is not a discard. Failure to retain any live fish once it is on board a vessel, or failure to retain any dead fish, is a discard.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accomodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing includes any activity, other than scientific research activity conducted by a scientific research vessel, which involves:

(1) The catching, taking, or harvesting of herring;

(2) The attempted catching, taking, or harvesting of herring;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of herring; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (1) Fishing, or (2) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Fishing week means the weekly period running from 0001 hours Sunday through 2400 hours Saturday.

Georges Bank and South means that management area consisting of the Northwest Atlantic Ocean excluding the Gulf of Maine.

Gulf of Maine means that management area consisting of a portion of the Northwest Atlantic Ocean north of 42°20′ N. latitude, plus that area south of 42°20′ N. latitude which is west of 70°00′ W. longitude and which is bounded on the south by the northern shore of Cape Cod, including the waters of Cape Cod Bay.

Operator, with respect to any fishing vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any fishing vessel, means:

(1) Any person who owns that vessel in whole or in part;

(2) Any charterer of the vessel, whether bareboat, time or voyage;

(3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, functions, or operation of the vessel; or

(4) Any agent designated as such by a person described in paragraphs (1), (2), or (3) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Person who receives Atlantic herring for commercial purpose means any person (excluding governments and governmental entities) engaged in commerce who is the first purchaser of herring. The term includes, but is not limited to dealers, brokers, processors, cooperatives, or fish exchanges. It does not include a person who only transports herring between a fishing vessel and a first purchaser.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930, or a designee.

Regulated species means any species for which fishing by a vessel of the United States is regulated pursuant to the Act.

United States harvested herring means caught, taken or harvested by vessels of the United States under this part, whether or not such herring are landed in the United States.

Vessel fishing for mackerel means any fishing vessel whose catch on board at any time is 75 percent mackerel (scomber-scombrus) by weight.

Vessel of the United States means: (a) Any vessel documented or numbered by the United States Coast Guard under United States law; or (b) any vessel, under five net tons, which is registered under the laws of any State.

§ 653.3 Relation to other laws.

Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

§ 653.4 Vessel permits and fees.

(a) *General.* Every vessel fishing for Atlantic herring under this part must have a permit issued under this section. Vessels are exempt from this requirement if they catch no more than 100 pounds of herring per trip.

(b) *Eligibility.* [Reserved]

(c) *Application.* (1) An application for a permit under this part must be submitted and signed by the owner or operator of the vessel on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) Applicants shall provide all of the following information:

(i) The name, mailing address including zip code, and telephone number of the owner of the vessel;

(ii) The name of the vessel;

(iii) The vessel's United States Coast Guard documentation number, or the vessel's State registration number for vessels not required to be documented under the provisions of 46 U.S.C.;

(iv) The home port, gross tonnage, radio call sign, and length of the vessel;

(v) The engine horsepower of the vessel;

(vi) The approximate fish hold capacity of the vessel;

(vii) The type and quantity of fishing gear used by the vessel;

(viii) The average size of the crew, which may be stated in terms of a normal range; and

(ix) Any other information concerning vessel characteristics requested by the Regional Director.

(3) Any change in the information specified in paragraph (c)(2) of this section shall be submitted by the applicant in writing to the Regional Director within 15 days of any such change.

(d) *Fees.* No fee shall be required for any permit issued under this part.

(e) *Issuance.* The Regional Director shall issue a permit to the applicant no later than 30 days from the receipt of a completed application.

(f) *Expiration.* A permit shall expire upon any change in vessel ownership, registration, name, length, gross tonnage, fish hold capacity, home port, or the regulated fisheries in which the vessel is engaged.

(g) *Duration.* A permit shall continue in full force and effect until it expires or is revoked, suspended or modified pursuant to 50 CFR Part 621.

(h) *Alteration.* No person shall alter, erase, or mutiliate any permit. Any permit which has been intentionally altered, erased, or mutilated is invalid.

(i) *Replacement.* Replacement permits may be issued by the Regional Director. An application for a replacement permit shall not be considered a new application.

(j) *Transfer.* Permits issued under this part are not transferable or assignable. A permit shall be valid only for the fishing vessel for which it is issued.

(k) *Display.* A permit issued under this part must be carried on board the fishing vessel at all times. The operator of a fishing vessel shall present the permit for inspection upon the request of an Authorized Officer.

(l) *Revocation.* Subpart D of 50 CFR Part 621 (Civil Procedures) governs the imposition of sanctions against a permit issued under this part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the permitted fishing vessel is used in the commission of an offense prohibited by the Act of these regulations, or if a civil penalty or criminal fine imposed under the Act is not paid.

§ 653.5 Recordkeeping and reporting requirements.

(a) *Fishing Vessel Records.* (1) The operator of any fishing vessel issued a permit to fish for herring subject to this part shall:

(i) Maintain an accurate and complete fishing vessel record on forms supplied by the Regional Director, according to the requirements of § 653.5(a)(2);

(ii) Make the fishing vessel record available for inspection or reproduction by an authorized officer at any time during or after a fishing trip;

(iii) Keep each fishing vessel record for one year after the date of the last entry in the record; and

(iv) Submit fishing vessel records, as specified in § 653.5(a)(2).

(2) The owner or operator of any fishing vessel conducting any fishing operation subject to this part shall:

(i) Submit a complete fishing vessel record to a location designated by the Regional Director within 48 hours after the end of any fishing week or fishing trip, whichever is the longer time period; or

(ii) Submit a statement to a location designated by the Regional Director within 48 hours after the end of any fishing week within which no fishing for any regulated species occurred.

(3) Fishing vessel records shall contain information on a daily basis for the entirety of any trip during which herring or any other regulated species are caught, and shall contain information for all fish which are caught.

(4) A request for exemption from the provisions of paragraph (a)(ii) of this section shall be submitted in writing to the Regional Director. Such request shall state the reason for the request and the period of time for which the exemption is to apply. The Regional Director may issue an exemption for a period of time greater than two months and less than ten months. If an exemption is issued, the Regional director must be notified in writing of the operator's intent to resume fishing before fishing is resumed.

(5) The authority to sanction permits in accordance with the provisions of 50 CFR Part 621 shall include the power to revoke, modify, or suspend the permit of a fishing vessel whose owner or operator falsifies or fails to submit the records and reports prescribed by this section.

(b) *Fish Dealer or Processor Reports.* Any person who receives Atlantic herring for a commercial purpose from a fishing vessel subject to this part shall:

(1) File a weekly report (Sunday through Saturday) at a location designated by the Regional Director on forms supplied by the Regional Director within 48 hours of the end of any week in which herring is received. This report shall include information on all first transfers, purchases, or receipts of all adult herring and other fish made during that week.

(2) Inspection of records. [Reserved]

(c) Paragraphs (a) and (b) of this section do not apply to operators of carrier vessels.

§ 653.6 Vessel identification.

(a) *Official Number.* Each fishing vessel subject to this part and over 25 feet in length shall display its Official Number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The Official Number is the documentation number issued by the Coast Guard for documented vessels or the registration number issued by a State or the Coast Guard for undocumented vessels.

(b) *Numerals.* (1) The Official Number shall be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height of all other vessels over 25 feet in length.

(2) The Official Number must be in block Arabic numerals in contrasting color to the background.

(c) *Vessel Length.* The length of a vessel, for purposes of this section, is the length set forth in Coast Guard or State Records.

(d) *Duties of Operator.* The operator of each fishing vessel shall:

(1) Keep the Official Number clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, or its fishing gear obstructs the view of the Official Number from any enforcement vessel or aircraft.

§ 653.7 Prohibitions.

It is unlawful for any person to:

(a) Use any vessel for the taking, catching, harvesting, or landing of any Atlantic herring (except as provided for in § 653.4(a)), unless the vessel has a valid permit issued pursuant to this part on board the vessel;

(b) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel;

(c) Falsify or fail to make, keep, maintain, or submit any fishing vessel record or fish dealer/processor report, or other record or report required by this part;

(d) Make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, landing, purchase, sale, or transfer of any herring;

(e) Fail to affix and maintain markings as required by § 653.6;

(f) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land any Atlantic herring taken in violation of the Act, this part, or any regulation promulgated under the Act;

(g) Fish for, take, catch, or harvest any Atlantic herring from the FCZ after the fishery has been closed pursuant to § 643.22;

(h) Discard Atlantic herring at sea;

(i) Transfer directly or indirectly, or attempt to so transfer, any United States harvested herring to any foreign fishing vessel, while such vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit, under section 204 of the Act, which authorizes the receipt by such vessel of United States harvesting herring;

(j) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Act, this part, or any other regulation promulgated under the Act;

(k) Fail to comply immediately with enforcement and boarding procedures specified in § 653.8;

(l) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any Authorized Officer in the conduct of any search or inspection under the Act;

(m) Resist a lawful arrest for any act prohibited by this part;

(n) Interfere with, obstruct, delay, or prevent by any means the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part;

(o) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process or enforcing this part;

(p) Violate any other provision of this part, the Act, or any regulation promulgated pursuant thereto.

§ 653.8 Enforcement.

(a) *General.* The operator of any fishing vessel subject to this part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch for purposes of enforcing the Act and this part.

(b) *Signals.* Upon being approached by a Coast Guard vessel or aircraft, or other vessel or aircraft authorized to enforce provisions of the Act, the operator of the fishing vessel shall be alert for communications conveying enforcement instructions. VHF-FM radiotelephone communication is the normal method of communicating between vessels. Should radiotelephone communication fail, however, other methods of communication, including visual signals, may be employed. The following signals extracted from the International Code of Signals are among those which maybe used and are included here for the safety and information of fishing vessel operators:

(1) "L" meaning "You should stop your vessel instantly";

(2) "SQ3" means "You should stop or heave to; I am going to board you"; and

(3) "AA AA AA" etc., which is the call to an unknown station to which

the signaled vessel shall respond by illuminating the vessel's identification required by § 653.6.

(c) *Boarding.* A vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way so as to permit the Authorized Officer and his/her party to come aboard;

(2) Provide a ladder for the Authorized Officer and his/her party;

(3) When necessary to facilitate boarding and/or when requested by an Authorized Officer, provide a man rope, safety line and illumination for the ladder; and

(4) Take such other actions as are necessary to ensure the safety of the Authorized Officer and his/her party to facilitate the boarding.

§ 653.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forefeiture provisions prescribed in the Act, and to 50 CFR Part 620 (Citations) and Part 621 (Civil Procedures) of this chapter.

Subpart B-Management Measures

§ 653.20 Fishing year.

The fishing year for Atlantic herring is the 12-month period beginning on July 1 and ending on June 30 of the following year.

§ 653.21 Seasonal catch quotas.

(a) *Gulf of Maine.* The annual quota of herring is 30,000 mt. It is divided by area and by periods of the year as follows:

(1) For the period July 1 through November 30, 17,850 mt, divided by area as follows:

(i) North of 43°34′ N. latitude (Cape Elizabeth, Maine), 8,850 mt.

(ii) South of 43°34′ N. latitude (Cape Elizabeth, Maine), 9,000 mt.

(2) For the period December 1 to June 30, for the area north of 43°34′ N. latitude, 1,620 mt.

(3) For the period April 1 to June 30, for the area south of 43°34′ N. latitude, 1,530 mt.

(4) For the period December 1 to March 31, a pooled quota for the areas of the Gulf of Maine south of 43°34′ N. latitude and Georges Bank and South, east of 71°50′ W. longitude, 12,000 mt.

(b) *Georges Bank and South.* The annual domestic quota for herring is 13,000 mt. It is divided by area and periods of the year as follows:

(1) For the period July 1 to November 30 and April 1 to June 30, in all areas, and for the period December 1 to March 31, west of 71°50′ W. longtitude, 10,000 mt.

(2) For the period December 1 to March 31, a pooled quota for the areas of Georges Bank and South, east of 71°50′ W. longitude and the Gulf of Maine south of 43°34′ N. latitude, 12,000 mt.

§ 653.22 Closures.

(a) *Closures.* (1) The Assistant Administrator shall project, at least once a month, a date when the quota of herring for each management area, less an anticipated amount to be taken incidentally pursuant to paragraph (b) of this section, will be caught. Except as provided in paragraph (2), if the projected date is earlier than the end of the period, the Assistant Administrator shall, by notice, prohibit fishing for herring in the applicable management area after the projected date.

(2) During the period December 1 through March 31, the Assistant Administrator shall by notice prohibit fishing for herring:

(i) In the Gulf of Maine south of 43°34′ N. latitude, and in Georges Bank and South, east of 71°50′ W. longitude, after the projected date that the combined catch from these areas will be 12,000 metric tons; or

(ii) In the Gulf of Maine south of 43°34′ N. latitude, after the projected date that the catch from this area will be 11,000 metric tons; or

(iii) In Georges Bank and South, east of 71°50′ W. latitude, after the projected date that the catch from this area will be 10,000 metric tons.

(b) *Incidental catch.* (1) Fishing vessels may fish in an area closed pursuant to this section for fish other than herring and be allowed an incidental catch of herring of not more than 5 percent by weight of the total catch on board. It shall be a rebuttable presumption that all herring found on board a vessel fishing in a closed area were taken in the closed area.

(2) Vessels fishing for mackerel in an area closed pursuant to this section shall be allowed an incidental catch of herring of not more than 20 percent by weight of the total catch on board.

§ 653.23 Adjustments to seasonal quotas.

(a) *Adjustments.* Quotas shall be adjusted by the Regional Director only in the following manner:

(1) Unharvested portions of the July 1-November 30 quota for the Gulf of Maine north of 43°34′ N. latitude shall be added to the December 1-June 30 quota for this area;

(2) Unharvested portions of the December 1-March 31 quota for the Gulf of Maine south of 43°34′ N. and Georges Bank east of 71°50′ W. latitude shall be added to the April 1-June 30 quota for the Gulf of Maine south of 43°34′ N. latitude;

(3) Unharvested portions of the July 1-November 30 quota for the Gulf of Maine south of 43°34′ N. latitude and Georges Bank and South, east of 71°50′ W. latitude.

(b) *Notice.* The Regional Director shall publish a notice of adjustment in the FEDERAL REGISTER.

§ 653.24 Notice of requirements.

(a) *Contents.* Any notice issued by the Assistant Administrator under this part shall include the following information:

(1) A description of the management area which is the subject of the closure;

(2) The effective date and any termination date of the closure;

(3) The reason for the closure.

(b) *Consultation.* Prior to publication of any notice, the Regional Director shall notify the Executive Directors of the New England and Mid-Atlantic Fishery Management Councils.

(c) *Effective date.* No notice issued under this section shall be effective until it is filed for publication with the FEDERAL REGISTER and has been mailed to all persons holding permits issued under § 653.4 at least 48 hours prior to its effective date.

(d) *Termination.* Notices published pursuant to this section shall remain in effect until the earlier of the following dates:

(1) Any expiration date stated in the notice; or

(2) The effective date of any notice which modifies, rescinds, or supercedes the initial notice.

§ 653.25 Discard prohibitions.

There shall be no discarding of herring at sea by fishing vessels.

§ 653.26 Spawning closures. [Reserved]

§ 653.27 Size restrictions. [Reserved]

PART 654—STONE CRAB FISHERY

Subpart A—General Measures

Sec.

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654.2 Definitions.
654.3 Relation to other laws.
654.4 Markings.
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Subpart B—Management Measures

654.20 Catch limitations.
654.21 Gear requirements.
654.22 Closed season.
654.23 Area restrictions.

AUTHORITY: 16 U.S.C. 1811 et seq.

SOURCE: 44 FR 53527, Sept. 14, 1979, unless otherwise noted.

Subpart A—General Measures

§ 654.1 Purpose and scope.

The regulations in this part govern fishing for stone crabs by fishing vessels of the United States within that portion of the Gulf of Mexico along the west coast of Florida, including the Keys, in which the United States exercises exclusive fishery management authority under the Act. The regulations also affect vessels of the United States in the trawl fishery in that area.

§ 654.2 Definitions.

In addition to the definitions in the Act, and unless the context requires otherwise, the terms used in this part shall have the following meaning. (Some definitions in the Act have been repeated here to aid understanding of the regulations.)

Act means the Fishery Conservation and Management Act of 1976, as amended (16 U.S.C. 1801-1882).

Authorized Officer means:

(1) Any commissioned, warrant or petty officer of the United States Coast Guard;

(2) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Biodegradable Panel means a panel, constructed of wood or cotton material and located in the upper half of the sides or on the top of a trap, which, when removed, will leave an opening in the trap measuring at least 4 by 6½ inches.

Center Director means the Center Director, Southeast Fisheries Center, National Marine Fisheries Service, 95 Virginia Beach Drive, Miami, Florida 33149. Telephone (305) 361-5761.

Fishery Conservation Zone (FCZ) means that area adjacent to the territorial sea of the constituent States of the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a vessel, which involves:

(1) The catching, taking or harvesting of fish;

(2) The attempted catching, taking or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraph (1), (2), or (3) of this definition.

Fishing vessel means any vessel, boat, ship or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(1) Fishing; or

(2) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation or processing.

Live box means a container used for holding live stone crabs on board a vessel.

Management area means that area of the FCZ adjacent to the territorial sea off the west coast of Florida and off the south side of the Florida Keys.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(1) Any person who owns that vessel in whole or in part;

(2) Any charterer of the vessel, whether bareboat, time or voyage; or

(3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the designation, function or operation of the vessel; and

(4) Any agent designated as such by any person described in paragraph (1), (2) or (3) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means the Regional Director, Southeast Regin, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Stone Crabs means *Menippe mercenaria*.

Vessel of the United States means:

(1) A vessel documented or numbered by the Coast Guard under United States law; or

(2) A vessel which is registered under the laws of any State.

United States Harvested Fish means fish caught, taken or harvested by vessels of the United States within any foreign or domestic fishery regulated under the Act.

§ 654.3 Relation to other laws.

(a) *Federal.* The regulations in this Part are intended to be compatible with, and do not supersede similar regulations in effect for the Everglades National Park (36 CFR 7.45).

(b) *State.* The regulations in this Part are intended to be compatible with similar regulations and statutes in effect in the State of Florida. Responsibilities relating to the issuance of numbers and colors, data collection, and enforcement may be performed by personnel of the State of Florida under agreement with the National Oceanic and Atmospheric Administration and the U.S. Coast Guard.

§ 654.4 Markings.

(a) *General.* No vessel other than a vessel of the United States which is properly registered, documented or numbered may fish for stone crabs in the management area.

(b) *Markings.* (1) Buoys and traps shall bear the number and color that correspond with their Florida stone crab permit number and color or their Federal number and color.

(2) Each vessel fishing for stone crabs in the management area shall be marked by its appropriate documentation, registration or number and shall be marked by the appropriate stone crab number and color.

(3) All markings shall be permanent. Vessel markings shall be of a size and location so as to be visible from the air. Buoy and trap markings shall be of such size and color so as to permit ready identification of the gear.

(c) *Application to the Regional Director.* (1) Persons who cannot obtain a Florida stone crab permit may apply to the Regional Director, who shall assign a Federal number and color to the vessel and its gear.

(2) Each application shall contain the following information:

(i) The applicant's name, mailing address, and telephone number;

(ii) The name of the vessel;

(iii) The vessel's United States Coast Guard documentation number or State license number; and

(iv) The vessel's radio call sign.

(d) *Fees.* No fee is required for a number and color issued by the Regional Director under this part.

§ 654.5 Record keeping and reporting requirements.

(a) *Owners and Operators.* The owner or operator of any fishing vessel that fishes for stone crabs and sells stone crab claws shall report the information required by this paragraph to the Center Director each month, on forms obtained from the Center Director. Reports shall contain the following information for each day's catch:

(1) The date of the catch;

(2) The gear identification (number and color) and the vessel name and number;

(3) The number of pounds of stone crab claws fished by zone (Zone 1—territorial sea; Zone 2—the FCZ shoreward of eight fathoms; Zone 3—the FCZ seaward of eight fathoms);

(4) The number of traps being fished per zone per month;

(5) The number of traps pulled per zone per day; and

(6) The name and address of the purchaser.

(b) *Dealers and Processors.* Any person who receives stone crab claws by way of purchase, barter, trade or sale from a fishing vessel subject to this part shall file a monthly report with the Center Director, on forms obtained from the Center Director; which shall contain the following information:

(1) The date the stone crab claws were received;

(2) The name and mailing address of the person receiving the stone crab claws;

(3) The name of the vessel;

(4) The weight in pounds of stone crab claws received by size class (large, medium and small);

(5) The ex-vessel value of stone crab claws purchased or handled monthly;

(6) The amount by weight of stone crab processed monthly; and

(7) The disposition of the stone crab claws processed or received.

(c) *Filing.* Reports under this section shall be filed on a form obtained from the Center Director, within ten days after the end of each month in which the stone crab claws were received or harvested.

§ 654.6 Restrictions.

(a) It is unlawful for any person:

(1) To possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land or export any stone crabs taken in violation of the Act, this part, or any other regulation promulgated under the Act;

(2) To refuse to permit an Authorized Officer to board a fishing vessel subject to the person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this part, or any other regulation promulgated under the Act;

(3) Forcibly to assault, resist, oppose, impede, intimidate, or interfere with any Authorized Officer in the conduct of any search or inspection described in paragraph (a)(2) of this section;

(4) To resist a lawful arrest for any act prohibited by this part;

(5) To interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part;

(6) To falsify or fail to submit any reports required by § 654.5; and

(7) To violate any other provisions of this part, the Act, or any regulation issued under the Act.

(b) It is unlawful for any vessel of the United States or for any owner or operator of any vessel of the United States to transfer directly or indirectly or attempt to so transfer any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under this Act.

§ 654.7 Enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to these regulations shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, log book, and catch for purposes of enforcing the Act or this part.

(b) *Signals.* Upon being approached by a Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Act, the operator of the fishing vessel shall be alert for signals conveying enforcement instructions. The following signals extracted from the International Code of Signals are among those which may be used:

(1) "L" meaning "You should stop your vessel instantly";

(2) "SQ3" meaning "You should stop or heave to; I am going to board you"; and

(3) "AA AA AA etc." which is the call to an unknown station, to which the signaled vessel should respond by illuminating the vessel identification required by § 654.4.

(c) *Boarding.* A vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the Authorized Officer and his party to come aboard;

(2) Provide a safe ladder for the Authorized Officer and his party;

(3) When necessary to facilitate the boarding, provide a man rope, safety line and illumination for the ladder; and

(4) Take such other actions as necessary to ensure the safety of the Authorized Officer and his party and to facilitate the boarding.

§ 654.8 Penalties.

Any person or fishing vessel found to be in violation of any regulation contained in this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, and 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 654.20 Catch limitations.

(a) *Claw Size.* No person shall remove a stone crab claw with a propodus measuring less than 2¾ inches from the body of a stone crab. Stone crab claws are measured in a straight line from the elbow to the tip of the lower immovable finger (see Figure 2). The propodus is the largest section of the claw assembly that has both a movable and immovable finger and is located farthest from the body when the entire appendage is extended.

(b) *Holding Crabs Aboard Fishing Vessels.* Stone crab bodies from which claws have been severed or removed must be returned to the water before the vessel leaves the fishery conservation zone. Stone crabs may be held in live boxes prior to the severing or removing the claws from the body, provided that the stone crabs are shaded from direct sunlight.

(c) *Traps.* No fisherman shall willfully tend, open, pull or otherwise molest another fisherman's traps without the prior written consent of that fisherman. (The buoy and corresponding lines are part of the trap for purposes of section.)

(d) *Time of Day.* No fisherman shall tend, open, pull, or otherwise molest traps during the period beginning one hour after sunset to one hour before sunrise.

§ 654.21 Gear requirements.

Traps used in the stone crab fishery must have a biodegradable panel. (See definition in § 654.2.)

§ 654.22 Closed season.

(a) No person shall possess stone crabs or any parts thereof in the fishery conservation zone during the period commencing on 0001 hours May 16 and terminating on 2400 hours October 14. Baited traps may be placed in the water on or after 0001 hours October 5 and fishermen may remove traps until 2400 hours May 20. Holding stone crabs in traps during the period 0001 hours October 5 to 2400 hours October 14 shall not be deemed possession, provided that the stone crabs are not fished until 0001 hours October 15. Holding stone crabs in traps during the period 0001 May 16 through 2400 hours May 20 shall not be deemed possession, provided that the stone crabs are not fished after 2400 hours May 15 and the stone crabs are returned immediately to the water when the traps are removed. No traps shall be in the water during the period commencing on 0001 hours May 21 and terminating on 2400 hours October 4.

§ 654.23 Area restrictions.

(a) Between January 1 and May 20, it shall be unlawful to use trawl gear, except as provided for in paragraph (b) of this section, in that part of the fishery conservation zone (Figure 1) shoreward of a line starting at point B (Lat. 26°16.0′N and Long. 81°58.5′W), and thence directly to point C (Lat. 26°00.0′N and Long. 82°04.0′W), and thence directly to point D (Lat. 25°09.0′N and Long. 81°47.6′W), and thence directly to point E (Lat. 24°54.5′N and Long. 81°50.5′W), and thence directly to the intersection of the territorial sea of the State of Florida and a line extending from point E to point F at Snipe Point (Lat. 24°41.9′N and Long. 81°40.5′W).

(b) Trawling for live bait shrimp may be conducted shoreward of the line specified in paragraph (a) of this section. Live bait boats must:

(1) Have live shrimp wells, (2) use gear other than otter trawls, and (3) possess no more than 5 pounds of dead shrimp at any time. It shall be a rebuttable presumption that any vessel not meeting all the above criteria is not engaged in the bait shrimp fishery.

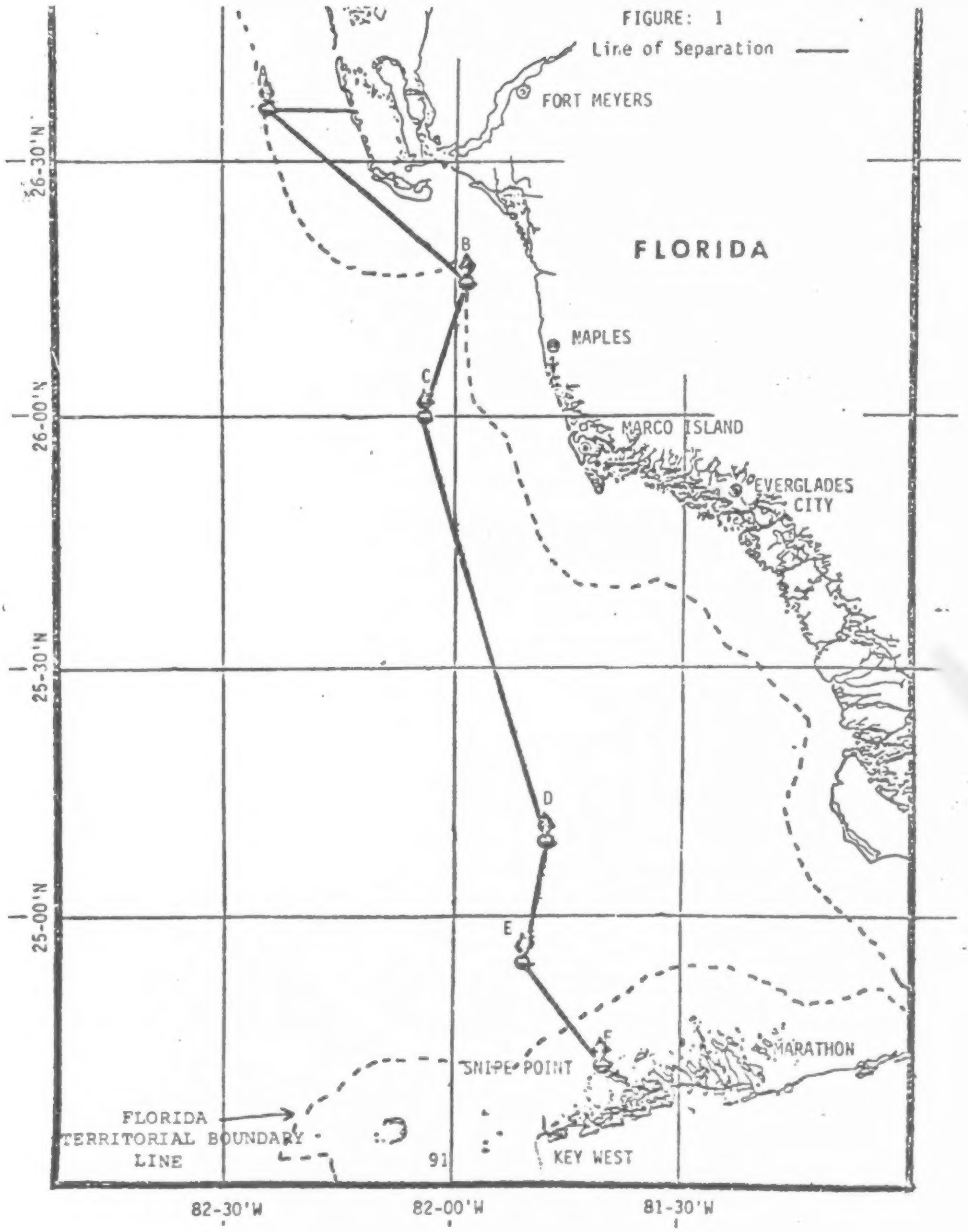
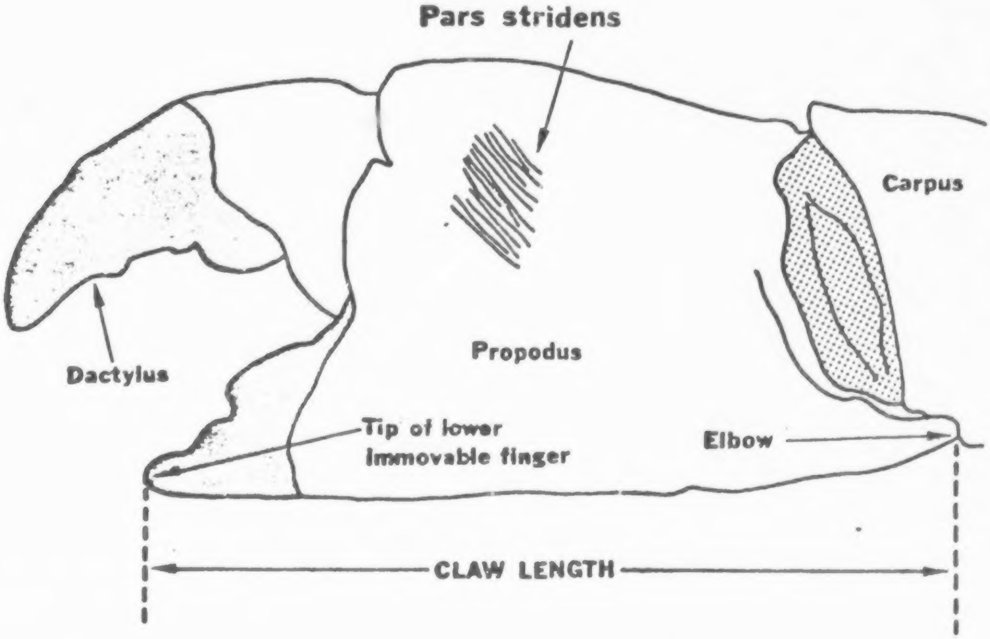


FIGURE: 1
Line of Separation
FORT MEYERS
FLORIDA
NAPLES
MARCO ISLAND
EVERGLADES CITY
A
B
C
D
E
F
MARATHON
SNIPE POINT
KEY WEST
FLORIDA TERRITORIAL BOUNDARY LINE
91
26-30'N
26-00'N
25-30'N
25-00'N
82-30'W
82-00'W
81-30'W


Pars stridens
Carpus
Dactylus
Propodus
Tip of lower immovable finger
Elbow
CLAW LENGTH

(FIGURE 2)

PART 655—ATLANTIC SQUID FISHERY

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 1801 et seq.

SOURCE: 45 FR 45298, July 3, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 655.1 Purpose and scope.

(a) The regulations in this part: (1) Implement the Fishery Management Plan for the Squid Fishery of the Northwest Atlantic Ocean, which was prepared and adopted by the Mid-Atlantic Fishery Management Council and approved by the Assistant Administrator; and (2) govern fishing for Atlantic squid by fishing vessels of the United States within that portion of the Northwest Atlantic Ocean, excluding the Gulf of Mexico, over which the United States exercises exclusive fishery management authority.

(b) The regulations governing fishing for Atlantic squid by foreign vessels in the fishery conservation zone are contained in 50 CFR Part 611. Appendix I to 50 CFR 611.20 contains the TALFFs for Atlantic squid.

§ 655.2 Definitions.

In addition to the definitions in the Act, the terms used in this part shall have the following meanings:

Act means the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration, Department of Commerce, or an individual to whom appropriate authority has been delegated.

Atlantic squid or *squid* means the species *Illex illecebrosus* (short-finned or summer squid) and *Loligo pealei* (long-finned or bone squid). *Illex* means the species *Illex illecebrosus. Loligo* means the species *Loligo pealei.*

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Services;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the U.S. Coast Guard to enforce the provisions of the Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Catch, take, or harvest includes, but is not limited to, any activity which results in mortality to any squid or in bringing any squid on board a vessel.

Charter or party boat means any vessel which carries passengers for hire to engage in fishing.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishery Management Plan (FMP) means the Fishery Management Plan for the Squid Fishery of the Northwest Atlantic Ocean, and any amendments thereto.

Fishing includes any activity, other than scientific research activity conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of squid;

(b) The attempted catching, taking, or harvesting of squid;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of squid; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b) or (c) of this definition.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (a) Fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Fishing week means the weekly period beginning 0001 hours Sunday and ending 2400 hours Saturday.

Joint venture harvest means U.S. harvested squid transferred at sea to foreign processing vessels.

Operator, with respect to any fishing vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any fishing vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by a person described in paragraph (a), (b) or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Person who receives Atlantic squid for a commercial purpose means any person (excluding governments and governmental entities) engaged in commerce who is the first purchaser of squid. The term includes, but is not limited to, dealers, brokers, processors, cooperatives, and fish exchanges. It does not include a person who only transports squid between a fishing vessel and a first purchaser.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; or a designee.

Regulated species means any species for which fishing by a vessel of the United States is regulated pursuant to the Act.

United States harvested squid means squid caught, taken, or harvested by vessels of the United States under this part, whether or not such squid is landed in the United States.

Vessel of the United States means:

(a) Any vessel documented or numbered by the United States Coast Guard under United States law; or

(b) Any vessel under five net tons which is registered under the laws of any State.

[45 FR 45298, July 3, 1980, as amended at 45 FR 63864, Sept. 26, 1980]

§ 655.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) All fishing activity, regardless of species sought, is prohibited pursuant to 15 CFR Part 924, on the *U.S.S. Monitor Marine Sanctuary*, which is located approximately 15 miles southwest of Cape Hatteras off the coast of North Carolina (35°00′23″ N., 75°24′32″ W.).

§ 655.4 Vessel permits and fees.

(a) *General.* Every fishing vessel which fishes for Atlantic squid under this part must have a fishing permit issued under this section. Vessels are exempt from this requirement if they catch no more than 100 pounds of squid per trip.

(b) *Eligibility.* [Reserved]

(c) *Application.* (1) An application for a fishing permit under this part must be submitted and signed by the owner or operator of the vessel on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) Applicants shall provide all the following information:

(i) The name, mailing address including ZIP code, and telephone number of the owner of the vessel;

(ii) The name of the vessel;

(iii) The vessel's United States Coast Guard documentation number or the vessel's State registration number, for vessels not required to be documented under provisions of Title 46 of the United States Code.

(iv) The home port or principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(v) The engine horsepower of the vessel and year the vessel was built;

(vi) The type of construction, type of propulsion, and type of echo sounder of the vessel;

(vii) The permit number of any current or previous Federal fishery permit issued to the vessel;

(viii) The approximate fish hold capacity of the vessel;

(ix) The type and quantity of fishing gear used by the vessel;

(x) The average size of the crew, which may be stated in terms of a normal range; and

(xi) Any other information concerning vessel and gear characteristics requested by the Regional Director.

(3) Any change in the information specified in paragraph (c)(2) of this section shall be submitted in writing to the Regional Director by the owner within 15 days of any such change.

(d) *Fees.* No fee is required for any permit issued under this part.

(e) *Issuance.* The Regional Director shall issue a permit to the applicant not later than 30 days from the receipt of a completed application.

(f) *Expiration.* A permit shall expire upon any change in vessel ownership, registration, name, length, gross tonnage, fish hold capacity, home port or the regulated fisheries in which the vessel is engaged.

(g) *Duration.* A permit shall continue in effect until it expires or is revoked, suspended, or modified pursuant to 50 CFR Part 621.

(h) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit which has been intentionally altered, erased, or mutilated is invalid.

(i) *Replacement.* Replacement permits may be issued by the Regional Director when requested in writing by the owner or operator stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacement permit shall not be considered a new application.

(j) *Transfer.* A permit issued under this part is not transferable or assignable. A permit shall be valid only for the fishing vessel and owner for which it is issued.

(k) *Display.* A permit issued under this part must be carried on board the fishing vessel at all times. The operator of a fishing vessel shall present the permit for inspection upon request of any Authorized Officer.

(l) *Sanctions.* Subpart D of 50 CFR Part 621 (Civil Procedures) governs the imposition of sanctions against a permit issued under this part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the permitted fishing vessel is used in the commission of an offense prohibited by the Act or these regulations, or if a civil penalty or criminal fine imposed under the Act is not paid.

§ 655.5 Recordkeeping and reporting requirements.

(a) *Fishing vessel records.* (1) The operator of any fishing vessel issued a permit to fish for squid under this part shall:

(i) Maintain on board the vessel an accurate and complete fishing vessel record on forms supplied by the Regional Director;

(ii) Make the fishing vessel record available for inspection or reproduction by an Authorized Officer at any time during or after a fishing trip;

(iii) Keep each fishing vessel record for one year after the date of the last entry in the fishing vessel record; and

(iv) Submit fishing vessel records, as specified in § 655.5(a)(2).

(2) The owner or operator of any fishing vessel conducting any fishing operation subject to this part shall:

(i) Submit a complete fishing vessel record to a location designated by the Regional Director 48 hours after the end of any fishing week or fishing trip (whichever time period is longer) during which any regulated species were taken; or

(ii) Submit a statement to a location designated by the Regional Director 48 hours after the end of any calendar week within which no fishing for any regulated species occurred.

(3) Fishing vessel records shall contain information on a daily basis for the entirety of any trip during which squid or any other regulated species are caught.

(i) The information shall include: Dates of fishing, type and size of gear used, areas fished, duration of fishing time, time period of tow or gear set, and the estimated weight of each species taken.

(ii) Information on squid catches shall be provided separately for *Illex* and *Loligo*.

(4) A request for exemption from the provisions of paragraph (a)(2)(ii) of this section shall be submitted in writing to the Regional Director. Such request shall state the reason for the request and the period of time for which the exemption is to apply. The Regional Director may issue an exemption for a period of time greater than two months and less than ten months. If an exemption is issued, the Regional Director must be notified in writing of the operator's intent to resume fishing before fishing may be allowed.

(5) The Assistant Administrator may revoke, modify, or suspend the permit of a fishing vessel whose owner or operator falsifies or fails to submit the records and reports prescribed by this section, in accordance with the provisions of 50 CFR Part 621.

(b) *Fish dealer or processor reports.* (1) Any person who receives Atlantic squid for a commercial purpose from a fishing vessel subject to this part shall file a weekly report (Sunday through Saturday) within 48 hours of the end of the week in which squid are received. This report shall include information on all first purchases, of squid (listing *Illex* and *Loligo* separately) and all other fish made during the week. Such information shall include date of transaction, name of the vessel from which squid were received, and the amount and price paid for squid and all other fish received.

(2) Domestic squid processing capacity. [Reserved]

(3) Reports required by § 655.5(b) shall be made on forms supplied by the Regional Director and submitted to a location designated by him.

(4) Inspection of records. [Reserved]

§ 655.6 Vessel identification.

(a) *Official Number.* Each fishing vessel subject to this part and over 25 feet in length shall display its Official Number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The Official Number is the documentation number issued by the U.S. Coast Guard for documented vessels, or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

(b) *Numerals.* (1) The Official Number shall be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels over 25 feet in length.

(2) The Official Number shall be permanently affixed to or painted on the vessel and shall be block Arabic numerals in contrasting color. However, charter or party boats may use nonpermanent markings to display the Official Number whenever the vessel is fishing for squid.

(c) *Vessel length.* The length of a vessel, for purposes of this section, is that length set forth in U.S. Coast Guard or State records.

(d) *Duties of operator.* The operator of each fishing vessel shall:

(1) Keep the Official Number clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel, its rigging, or its fishing gear obstructs the view of the Official Number from an enforcement vessel or aircraft.

§ 655.7 Prohibitions.

It is unlawful for any person to:

(a) Use any vessel for the taking, catching, harvesting, or landing of any Atlantic squid (except as provided for in § 655.4(a)), unless the vessel has a valid permit issued pursuant to this part, on board the vessel;

(b) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel;

(c) Falsify or fail to make, keep, maintain, or submit any fishing vessel record or fish dealer or processor report, or other record or report required by this part;

(d) Make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, landing, purchase, sale, or transfer of any squid;

(e) Fail to affix and maintain vessel markings as required by § 655.6;

(f) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land any Atlantic squid taken in violation of the Act, this part, or any regulation promulgated under the Act;

(g) Fish for, take, catch, or harvest any Atlantic squid from the FCZ after the fishery has been closed pursuant to § 655.23;

(h) Transfer directly or indirectly, or attempt to so transfer, any United States harvested squid to any foreign fishing vessel, while such vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Act, which authorizes the receipt by such vessel of the United States harvested squid;

(i) Refuse to permit an Authorized Officer to inspect any fishing vessel record;

(j) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this part, or any other regulation promulgated under the Act;

(k) Fail to comply immediately with enforcement and boarding procedures specified in § 655.8;

(l) Forcibly assault, resist, oppose, impede, intimidate, threaten or interfere with an Authorized Officer in the conduct of any search or inspection under the Act;

(m) Resist a lawful arrest for any act prohibited by this part;

(n) Interfere with, obstruct, delay, or prevent by any means the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part;

(o) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part; or

(p) Violate any other provision of this part, the Act, or any regulation promulgated pursuant thereto.

§ 655.8 Enforcement.

(a) *General.* The operator of any fishing vessel subject to this part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing the Act and this part.

(b) *Signals.* Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft authorized to enforce the Act, the operator of the fishing vessel shall be alert for communications conveying enforcement instructions. VHF-FM radiotelephone is the normal method of communication between vessels. Should radiotelephone communications fail, however, other methods of communication, including visual signals, may be employed. The following signals extracted from the International Code of Signals are among those which may be used, and are included here for the safety and information of fishing vessel operators:

(1) "L" means "You should stop your vessel instantly";

(2) "SQ3" means "You should stop or heave to; I am going to board you;" and

(3) "AA AA AA etc.," which is the call to an unknown station, to which the signaled vessel shall respond by illuminating the vessel's Official Number required by § 655.6.

(c) *Boarding.* A vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the authorized Officer and his/her party to come aboard.

(2) Provide a safe ladder for the Authorized Officer and his/her party;

(3) When necessary to facilitate the boarding and/or when requested by an Authorized Officer, provide a man rope, safety line and illumination for the ladder; and

(4) Take such other actions as necessary to insure the safety of the Authorized Officer and his/her party to facilitate the boarding.

§ 655.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, and to 50 CFR Part 620 (Citations) and Part 621 (Civil Procedures).

Subpart B—Management Measures

§ 655.20 Fishing year.

The fishing year for Atlantic squid is the 12-month period beginning April 1 and ending on March 31 of the following year.

§ 655.21 Allowable levels of harvest.

(a) *Harvest levels.* The allowed level of harvest of Atlantic squid on a fishing year basis is 30,000 metric tons (mt) of *Illex* and 44,000 mt of *Loligo.* The initial level of harvest by vessels of the United States is 5,000 mt of *Illex* and 7,000 mt of *Loligo.*

(b) *Reserve.* A reserve of 13,000 mt for *Illex* and 19,000 mt for *Loligo* is available for adjustments to the initial level of foreign fishing if it is determined that domestic fishermen will not harvest it.

(c) *Territorial waters.* These regulations do not restrict harvest of Atlantic squid in the waters landward of the FCZ. Harvests from these waters, however, shall be subtracted from the annual domestic levels of harvest set forth in paragraph (a) of this section.

§ 655.22 Allocations.

(a) *Projections.* During August in the case of *Illex,* and during September in the case of *Loligo,* the Regional Director will project the total amounts of squid that will be harvested by U.S. fishermen during the entire fishing year. For *Illex,* the monthly catches from April through July (exclusive of joint venture harvest) will be multiplied by a factor of 2.9 to obtain a projected annual harvest. For *Loligo,* the monthly catches from April through August (exclusive of joint venture harvest) will be multiplied by a factor of 1.3 to obtain a projected annual harvest.

(b) *Joint ventures.* If any permits authorizing receipt of U.S. harvested squid have been issued to foreign processing vessels by August 15 (for *Illex*) or by September 15 (for *Loligo*), the Regional Director will add to the projected annual harvest the amounts of squid authorized to be received by such permits.

(c) *Allocation of reserves.* If the projected amount of either species of squid to be harvested by U.S. fishermen, including joint venture harvest, exceeds the initial level of harvest specified in § 655.21(a), the Regional Director shall leave the excess in the reserve to allow the U.S. fishery for that species to continue without closure throughout the year. The Regional Director shall allocate the rest of the reserve for that species to the total allowable level of foreign fishing (TALFF). If the projected amount of either species of squid to be harvested by U.S. fishermen, including joint venture harvest, does not exceed the initial level of harvest specified in § 655.21(a), the Regional Director shall allocate the entire reserve for that species to the TALFF.

(d) *Notice of allocation.* On or about September 1 for *Illex,* and on or about October 1 for *Loligo,* the Regional Director shall:

(1) Notify the Executive Directors of the Mid-Atlantic, New England, and

South Atlantic Councils of his decision; and

(2) Publish a notice of the decision on allocation in the FEDERAL REGISTER.

(e) *Subsequent allocation.* After the initial allocation decision is made, the Regional Director may allocate any remaining portion of the reserve to TALFF, if he determines that the domestic harvest, including joint venture harvest, will not attain the level projected under paragraphs (a) and (b) of this section plus any joint venture harvest authorized after the initial decision. Notice of subsequent allocations will be made according to the procedures in paragraph (d) of this section.

[45 FR 63864, Sept. 26, 1980]

§ 655.23 Closure of fishery.

(a) *General.* The Regional Director shall periodically monitor catches and landings of Atlantic squid.

(b) *Decision to close.* The Assistant Administrator shall close the domestic fishery for either species when the domestic harvest for that species has reached 80 percent of the total of the initial level of domestic harvest plus the part of the reserve which has not been allocated to TALFF, if he finds that this action is necessary to prevent the allowed level of domestic harvest from being exceeded.

(c) *Notice of closure.* If the Assistant Administrator determines that a closure of the domestic fishery for either *Illex* or *Loligo* is necessary, the Assistant Administrator shall:

(1) Notify in advance the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils of the closure;

(2) Mail notifications to all holders of permits issued under § 655.5 of the closure at least 72 hours prior to the effective date of the closure; and

(3) Publish a notice of closure in the FEDERAL REGISTER.

(d) *Incidental catch.* During a period of closure, fishing vessels may catch, take, or harvest the relevant species of squid incidental to fishing for other species of fish: *Provided,* That such species of squid constitutes no more than 10 percent by weight of the total catch of all fish on board the vessel at the end of any fishing trip.

§ 655.24 Area/time restrictions. [Reserved]

§ 655.25 Gear/vessel equipment restrictions. [Reserved]

§ 655.26 Effort restrictions. [Reserved]

PART 656—ATLANTIC MACKEREL FISHERY

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 45 FR 45293, July 3, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 656.1 Purpose and scope.

(a) The regulations in this part: (1) Implement the Fishery Management Plan for the Mackerel Fishery of the Northwest Atlantic Ocean, which was prepared and adopted by the Mid-Atlantic Fishery Management Council and approved by the Assistant Administrator; and (2) govern fishing for Atlantic mackerel by fishing vessels of the United States within that portion of the Northwest Atlantic Ocean over which the United States exercises exclusive fishery management authority, excluding the Gulf of Mexico.

(b) The regulations governing fishing for Atlantic mackerel by foreign vessels in the fishery conservation zone are contained in 50 CFR Part 611. Appendix I to 50 CFR 611.20 contains the TALFF for Atlantic mackerel.

§ 656.2 Definitions.

In addition to the definitions in the Act, the terms used in this part shall have the following meanings:

Act means the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration, Department of Commerce, or an individual to whom appropriate authority has been delegated.

Atlantic mackerel or *mackerel* means the species *Scomber scombrus* ranging from Labrador to North Carolina.

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Services;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the U.S. Coast Guard to enforce the provisions of the Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Catch, take, or harvest includes, but is not limited to, any activity which results in mortality to any mackerel or in bringing any mackerel on board a vessel.

Charter or party boat means any vessel which carries passengers for hire to engage in fishing.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishery Management Plan (FMP) means the Fishery Management Plan for the Mackerel Fishery of the Northwest Atlantic Ocean, and any amendments thereto.

Fishing includes any activity, other than scientific research activity conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of mackerel;

(b) The attempted catching, taking, or harvesting of mackerel;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of mackerel; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b) or (c) of this definition.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (a) Fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Fishing week means the weekly period beginning 0001 hours Sunday and ending 2400 hours Saturday.

Operator, with respect to any fishing vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any fishing vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by a person described in paragraph (a), (b) or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Person who receives Atlantic mackerel for a commercial purpose means any person (excluding governments and governmental entities) engaged in commerce who is the first purchaser of mackerel. The term includes, but is not limited to, dealers, brokers, processors, cooperatives, or fish exchanges. It does not include a person who only transports mackerel between a fishing vessel and a first purchaser.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; or a designee.

Regulated species means any species for which fishing by a vessel of the United States is regulated pursuant to the Act.

United States harvested mackerel means mackerel caught, taken, or harvested by vessels of the United States under this part, whether or not such mackerel is landed in the United States.

Vessel of the United States means:

(a) Any vessel documented or numbered by the United States Coast Guard under United States law; or

(b) Any vessel under five net tons which is registered under the laws of any State.

§ 656.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) All fishing activity, regardless of species sought, is prohibited pursuant to 15 CFR Part 924, on the *U.S.S. Monitor* Marine Sanctuary, which is located approximately 15 miles southwest of Cape Hatteras off the coast of North Carolina (35°00′23″N., 75°24′32″W.).

§ 656.4 Vessel permits and fees.

(a) *General.* Every fishing vessel which fishes for Atlantic mackerel under this part must have a fishing permit issued under this section. Vessels are exempt from this requirement if they catch no more than 100 pounds of mackerel per trip.

(b) *Eligibility.* [Reserved]

(c) *Application.* (1) An application for a fishing permit under this part must be submitted and signed by the owner or operator of the vessel on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) Applicants shall provide all the following information:

(i) The name, mailing address including ZIP code, and telephone number of the owner of the vessel;

(ii) The name of the vessel;

(iii) The vessel's United States Coast Guard documentation number, or the vessel's State registration number for vessels not required to be documented under provisions of Title 46 of the United States Code;

(iv) The home port or principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(v) The engine horsepower of the vessel and year the vessel was built;

(vi) The type of construction, type of propulsion, and type of echo sounder of the vessel;

(vii) The permit number of any current or previous Federal fishery permit issued to the vessel;

(viii) The approximate fish hold capacity of the vessel;

(ix) The type and quantity of fishing gear used by the vessel;

(x) The average size of the crew, which may be stated in terms of a normal range; and

(xi) Any other information concerning vessel and gear characteristics requested by the Regional Director.

(3) Any change in the information specified in paragraph (c)(2) of this section shall be submitted in writing to the Regional Director by the owner within 15 days of any such change.

(d) *Fees.* No fee is required for any permit issued under this part.

(e) *Issuance.* The Regional Director shall issue a permit to the applicant not later than 30 days from the receipt of a completed application.

(f) *Expiration.* A permit shall expire upon any change in vessel ownership, registration, name, length, gross tonnage, fish hold capacity, home port or the regulated fisheries in which the vessel is engaged.

(g) *Duration.* A permit shall continue in effect until it expires or is revoked, suspended, or modified pursuant to 50 CFR Part 621.

(h) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit which has been intentionally altered, erased, or mutilated is invalid.

(i) *Replacement.* Replacement permits may be issued by the Regional Director when requested in writing by the owner or operator stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacement permit shall not be considered a new application.

(j) *Transfer.* A permit issued under this part is not transferable or assignable. A permit shall be valid only for the fishing vessel and owner for which it is issued.

(k) *Display.* A permit issued under this part must be carried on board the fishing vessel at all times. The operator of a fishing vessel shall present the permit for inspection upon request of any Authorized Officer.

(l) *Sanctions.* Subpart D of 50 CFR Part 621 (Civil Procedures) governs the imposition of sanctions against a permit issued under this part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the permitted fishing vessel is used in the commission of an offense prohibited by the Act or these regulations, or if a civil penalty or criminal fine imposed under the Act is not paid.

§ 656.5 Recordkeeping and reporting requirements.

(a) *Fishing vessel records.* (1) The operator of any fishing vessel issued a permit to fish for mackerel under this part shall:

(i) Maintain on board the vessel an accurate and complete fishing vessel record on forms supplied by the Regional Director;

(ii) Make the fishing vessel record available for inspection or reproduction by an Authorized Officer at any time during or after a fishing trip;

(iii) Keep each fishing vessel record for one year after the date of the last entry in the fishing vessel record; and

(iv) Submit fishing vessel records, as specified in § 656.5(a)(2).

(2) The owner or operator of any fishing vessel conducting any fishing operation subject to this part shall:

(i) Submit a complete fishing vessel record to a location designated by the Regional Director 48 hours after the end of any fishing week or fishing trip (whichever time period is longer) during which any regulated species were taken; or

(ii) Submit a statement to a location designated by the Regional Director 48 hours after the end of any calendar week within which no fishing for any regulated species occurred.

(3) Fishing vessel records shall contain information on a daily basis for the entirety of any trip during which mackerel or any other regulated species are caught. The information shall include dates of fishing, type and size of gear used, areas fished, duration of fishing time, time period of tow or gear set, and the estimated weight of each species taken.

(4) A request for exemption from the provisions of paragraph (a)(2)(ii) of this section shall be submitted in writing to the Regional Director. Such request shall state the reason for the request and the period of time for which the exemption is to apply. The Regional Director may issue an exemption for a period of time greater than two months and less than ten months. If an exemption is issued, the Regional Director must be notified in writing of the operator's intent to resume fishing before fishing may be resumed.

(5) The Assistant Administrator may revoke, modify, or suspend the permit of a fishing vessel whose owner or operator falsifies or fails to submit the records and reports prescribed by this section, in accordance with the provisions of 50 CFR Part 621.

(b) *Fish dealer or processor reports.* (1) Any person who receives Atlantic mackerel for a commercial purpose from a fishing vessel subject to this part shall file a weekly report (Sunday through Saturday) within 48 hours of the end of the week in which mackerel is received. This report shall include information on all first purchases of mackerel and all other fish made during the week. Such information shall include date of transaction, name of the vessel from which mackerel was received, and the amount and price paid for mackerel and all other fish received.

(2) Domestic mackerel processing capacity. [Reserved]

(3) Reports required by § 656.5(b) shall be made on forms supplied by the Regional Director and submitted to a location designated by him.

(4) Inspection of records. [Reserved]

§ 656.6 Vessel identification.

(a) *Official Number.* Each fishing vessel subject to this part and over 25 feet in length shall display its Official Number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The Official Number is the documentation number issued by the U.S. Coast Guard for documented vessels or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

(b) *Numerals.* (1) The Official Number shall be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels over 25 feet in length.

(2) The Official Number shall be permanently affixed to or painted on the vessel and shall be block Arabic numerals in contrasting color. However, charter or party boats may use nonpermanent markings to display the Official Number whenever the vessel is fishing for mackerel.

(c) *Vessel length.* The length of a vessel, for purposes of this section, is that length set forth in U.S. Coast Guard or State records.

(d) *Duties of operator.* The operator of each fishing vessel shall:

(1) Keep the Official Number clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel, its rigging, or its fishing gear obstructs the view of the Official Number from an enforcement vessel or aircraft.

§ 656.7 Prohibitions.

It is unlawful for any person to:

(a) Use any vessel for the taking, catching, harvesting, or landing of any Atlantic mackerel (except as provided for in § 656.4(a)), unless the vessel has a valid permit issued pursuant to this part, on board the vessel;

(b) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel;

(c) Falsify or fail to make, keep, maintain, or submit any fishing vessel record or fish dealer or processor report, or other record or report required by this part;

(d) Make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, landing, purchase, sale, or transfer of any mackerel;

(e) Fail to affix and maintain vessel markings as required by § 656.6 of this part;

(f) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land any Atlantic mackerel taken in violation of the Act, this part, or any regulation promulgated under the Act;

(g) Fish for, take, catch, or harvest any Atlantic mackerel from the FCZ after the fishery has been closed pursuant to § 656.23;

(h) Transfer directly or indirectly, or attempt to so transfer, any United States harvested mackerel to any foreign fishing vessel, which such vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Act, which authorizes the receipt by such vessel of the United States harvested mackerel;

(i) Refuse to permit an Authorized Officer to inspect any fishing vessel record;

(j) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this part, or any other regulation promulgated under the Act;

(k) Fail to comply immediately with enforcement and boarding procedures specified in § 656.8;

(l) Forcibly assault, resist, oppose, impede, intimidate, threaten or interfere with an Authorized Officer in the conduct of any search or inspection under the Act;

(m) Resist a lawful arrest for any act prohibited by this part;

(n) Interfere with, obstruct, delay, or prevent by any means the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part;

(o) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this part; or

(p) Violate any other provision of this part, the Act, or any regulation promulgated pursuant thereto.

§ 656.8 Enforcement.

(a) *General.* The operator of any fishing vessel subject to this part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing the Act and this part.

(b) *Signals.* Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft authorized to enforce the Act, the operator of the fishing vessel shall be alert for communications conveying enforcement instructions. VHF-FM radiotelephone is the normal method os communication between vessels. Should radiotelephone communications fail, however, other methods of communication, including visual signals, may be employed. The following signals extracted from the International Code of Signals are among those which may be used, and are included here for the safety and information of fishing vessel operators:

(1) "L" means "You should stop your vessel instantly;"

(2) "SQ3" means "You should stop or heave to; I am going to board you;" and

(3) "AA AA AA etc.," which is the call to an unknown station, to which the signaled vessel shall respond by illuminating the vessel's Official Number required by § 656.6.

(c) *Boarding.* A vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the Authorized Officer and his/her party to come aboard.

(2) Provide a safe ladder for the Authorized Officer and his/her party;

(3) When necessary to facilitate the boarding and/or when requested by an Authorized Officer, provide a man rope, safety line and illumination for the ladder; and

(4) Take such other actions as necessary to insure the safety of the Authorized Officer and his/her party to facilitate the boarding.

§ 656.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, and to 50 CFR Part 620 (Citations) and Part 621 (Civil Procedures).

Subpart B—Management Measures

§ 656.20 Fishing year.

The fishing year for Atlantic mackerel is the 12-month period beginning April 1 and ending on March 31 of the following year.

§ 656.21 Allowable levels of harvest.

(a) *Harvest levels.* The allowed level of harvest of Atlantic mackerel on a fishing year basis is 30,000 metric tons (mt). The initial level of harvest by vessels of the United States is 20,000 mt.

(b) *Reserve.* A reserve of 6,000 mt is available for adjustments to the initial level of foreign fishing if it is ascertained that domestic fishermen will not harvest it.

(c) *Territorial waters.* These regulations do not restrict harvests of Atlantic mackerel in the waters landward of the FCZ. Harvests from these waters, however, shall be subtracted from the annual domestic level of harvest set forth in paragraph (a) of this section.

§ 656.22 Allocations.

(a) *Projections.* During October, the Regional Director will project the total amount of mackerel that will be harvested by U.S. fishermen during the entire fishing year. In making this projection, the Regional Director will consider not only the actual reported domestic harvest through September 30, but also the ability and intent of domestic harvesters and processors to harvest and process Atlantic mackerel during the remainder of the fishing year.

(b) *Allocation of Reserve.* If the projected amount of mackerel to be harvested by U.S. fishermen exceeds the initial level of harvest specified in §656.21(a), the Regional Director will leave the excess in the reserve to allow the U.S. fishery to continue without closure throughout the year. The Regional Director will allocate the rest of the reserve to the total allowable level of foreign fishing (TALFF). If the projected amount of mackerel to be harvested by U.S. fishermen does not exceed the initial level of harvest specified in § 656.21(a), the Regional Director will allocate the entire reserve to TALFF.

(c) *Notice of allocation.* (1) By November 1 the Regional Director will publish a notice stating the amount of mackerel proposed to be allocated from reserve to TALFF in the FEDERAL REGISTER. The public will be given 15 days from the date of publication to comment on the proposed allocation. During the comment period, the Regional Director will consult with the Executive Director of the Mid-Atlantic Council on the consistency of the proposed allocation with the objectives of the FMP.

(2) The Regional Director will publish a final notice of the decision on allocation in the FEDERAL REGISTER. It will contain a summary of all comments and relevant information received during the comment period and the latest catch statistics available for Atlantic mackerel.

(d) *Subsequent allocations.* After the initial allocation decision is made, the Regional Director may allocate any remaining portion of the reserve to TALFF, if he determines that the domestic harvest will not attain the level projected under paragraph (a) of this section. Notice of subsequent allocations will be made according to the procedures stated in paragraph (c) of this section.

[45 FR 77446, Nov. 24, 1980]

§ 656.23 Closure of fishery.

(a) *General.* The Regional Director shall periodically monitor catches and landings of Atlantic mackerel.

(b) *Decision to close.* The Assistant Administrator shall close the domestic fishery when it has harvested 80 percent of the total of the initial level of domestic harvest plus the part of the reserve which has not been allocated to TALFF, if he finds that this action is necessary to prevent the allowed level of domestic harvest from being exceeded.

(c) *Notice of closure.* If the Assistant Administrator determines that a closure of the domestic fishery for mackerel is necessary, the Assistant Administrator shall:

(1) Notify in advance the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils of the closure;

(2) Mail notifications to all holders of permits issued under § 656.5 of the closure at least 72 hours prior to the effective date of the closure; and

(3) Publish a notice of closure in the FEDERAL REGISTER.

(d) *Incidental catch.* During a period of closure, fishing vessels may catch, take, or harvest Atlantic mackerel incidental to fishing for other species of fish: *Provided,* That the amount of Atlantic mackerel constitutes no more than 10 percent by weight of the total catch of all other fish on board the vessel at the end of any fishing trip.

§ 656.24 Area/time restrictions. [Reserved]

§ 656.25 Gear/vessel equipment restrictions. [Reserved]

§ 656.26 Effort restrictions. [Reserved]

PART 657—ATLANTIC BUTTERFISH FISHERY

Subpart A—General Provisions

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657.26 Area/time restrictions. [Reserved]

AUTHORITY: 16 U.S.C. 1801 et seq.

SOURCE: 45 FR 71359, Oct. 28, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 657.1 Purpose and scope.

(a) The regulations in this part: (1) implement the Fishery Management Plan for the Atlantic Butterfish Fishery of the Northwest Atlantic Ocean, which was prepared and adopted by the Mid-Atlantic Fishery Management Council and approved by the Assistant Administrator; and (2) govern fishing for Atlantic butterfish by fishing vessels of the United States within that portion of the Atlantic Ocean over which the United States exercises exclusive fishery management authority.

(b) The regulations governing fishing for Atlantic butterfish by foreign vessels in the fishery conservation zone are contained in 50 CFR Part 611. The Appendix to 50 CFR 611.20 contains the total allowable level of foreign fishing for butterfish.

§ 657.2 Definitions.

In addition to the definitions in the Act, the terms used in this part shall have the following meanings:

Act means the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration, Department of Commerce, or an individual to whom appropriate authority has been delegated.

Atlantic butterfish or butterfish means the species *Peprilus triacanthus.*

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Services;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the U.S. Coast Guard to enforce the provisions of the Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Catch, take, or harvest includes, but is not limited to, any human activity which results in mortality to any butterfish or in bringing any butterfish on board a vessel.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishery Management Plan (FMP) means the Fishery Management Plan for the Atlantic Butterfish Fishery of the Northwest Atlantic Ocean, and any amendments thereto.

Fishing includes any activity, other than scientific research activity conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of butterfish;

(b) The attempted catching, taking, or harvesting of butterfish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of butterfish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b) or (c) of this definition.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (a) fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Fishing week means the weekly period beginning 0001 hours Sunday and ending 2400 hours Saturday.

Operator, with respect to any fishing vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any fishing vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by a person described in paragraph (a), (b) or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Person who receives Atlantic butterfish for a commercial purpose means any person (excluding governments and governmental entities) engaged in commerce who is the first purchaser of butterfish. The term includes dealers, brokers, processors, cooperatives, or fish exchanges. It does not include a person who only transports butterfish between a fishing vessel and a first purchaser.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; or a designee.

Regulated species means any species for which fishing by a vessel of the United States is regulated pursuant to the Act.

United States harvested butterfish means butterfish caught, taken, or harvested by vessels of the United States under this part, whether or not such butterfish is landed in the United States.

Vessel of the United States means:

(a) Any vessel documented or numbered by the United States Coast Guard under United States law; or

(b) Any vessel under five net tons registered under the laws of any State.

§ 657.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) All fishing activity, regardless of species sought, is prohibited pursuant to 15 CFR Part 924, on the U.S.S. *Monitor Marine Sanctuary,* which is located approximately 15 miles southwest of Cape Hatteras off the coast of North Carolina (35°00′23″N., 75°24′32″W.).

§ 657.4 Vessel permits and fees.

(a) *General.* Every fishing vessel which fishes for Atlantic butterfish under this part must have a fishing permit issued under this section. Vessels are exempt from this requirement if they catch no more than 100 pounds of butterfish per trip.

(b) *Eligibility.* [Reserved]

(c) *Application.* (1) An application for a fishing permit under this part must be submitted and signed by the owner or operator of the vessel on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) Applicants shall provide all the following information:

(i) The name, mailing address including ZIP code, and telephone number of the owner of the vessel;

(ii) The name of the vessel;

(iii) The vessel's United States Coast Guard documentation number, or the vessel's State registration number for vessels not required to be documented under provisions of Title 46 of the United States Code;

(iv) The home port or principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(v) The engine horsepower of the vessel and year the vessel was built;

(vi) The type of construction, type of propulsion, and type of echo sounder of the vessel;

(vii) The permit number of any current or previous Federal fishery permit issued to the vessel;

(viii) The approximate fish hold capacity of the vessel;

(ix) The type and quantity of fishing gear used by the vessel;

(x) The average size of the crew, which may be stated in terms of a normal range; and

(xi) Any other information concerning vessel and gear characteristics requested by the Regional Director.

(3) Any change in the information specified in paragraph (c)(2) of this section shall be submitted in writing to the Regional Director by the owner within 15 days of any such change.

(d) *Fees.* No fee is required for any permit issued under this part.

(e) *Issuance.* The Regional Director shall issue a permit to the applicant not later than 30 days from the receipt of a completed application.

(f) *Expiration.* A permit shall expire upon any change in vessel ownership, registration, name, length, gross tonnage, fish hold capacity, home port or the regulated fisheries in which the vessel is engaged.

(g) *Duration.* A permit shall continue in effect until it expires or is revoked, suspended, or modified pursuant to 50 CFR Part 621.

(h) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit which has been intentionally altered, erased, or mutilated is invalid.

(i) *Replacement.* Replacement permits may be issued by the Regional Director when requested in writing by the owner or operator stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacemnt permit shall not be considered a new application.

(j) *Transfer.* A permit issued under this part is not transferable or assignable. A permit shall be valid only for the fishing vessel owner for which it is issued.

(k) *Display.* A permit issued under this part must be carried on board the fishing vessel at all times. The operator of a fishing vessel shall present the permit for inspection upon request of any Authorized Officer.

(l) *Sanctions.* Subpart D of 50 CFR Part 621 (Civil Procedures) governs the imposition of sanctions against a permit issued under this part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the permitted fishing vessel is used in the commission of an offense prohibited by the Act or these regulations, or if a civil penalty or criminal fine imposed under the Act is not paid.

§ 657.5 Recordkeeping and reporting requirements.

(a) *Fishing vessel records.* (1) The operator of any fishing vessel issued a permit to fish for butterfish under this part shall:

(i) Maintain on board the vessel an accurate and complete fishing vessel record on forms supplied by the Regional Director;

(ii) Make the fishing vessel record available for inspection or reproduction by an Authorized Officer, or an employee of the National Marine Fisheries Service designated by the Regional Director to make such inspections, at any time during or after a fishing trip;

(iii) Keep each fishing vessel record for one year after the date of the last entry in the fishing vessel record; and

(iv) Submit fishing vessel records, as specified in § 657.5(a)(2).

(2) The owner or operator of any fishing vessel conducting any fishing operation subject to this part shall:

(i) Submit a complete fishing vessel record to a location designated by the Regional Director 48 hours after the end of any fishing week or fishing trip (whichever time period is longer) during which any regulated species were taken; or

(ii) Submit a statement to a location designated by the Regional Director 48 hours after the end of any calendar week, that fishing for any regulated species did not occur during that week.

(3) Fishing vessel records shall contain information on a daily basis for the entirety of any trip during which butterfish or any other regulated species are caught.

(4) A request for exemption from the provisions of § 657.5(a)(2)(ii) of this section shall be submitted, in writing, to the Regional Director. Such request shall state the reason for the request and the period for which the exemption is to apply. The Regional Director may issue an exemption for a period of time greater than two months and less than ten months. If an exemption is issued, the Regional Director must be notified in writing of the operator's intent to resume fishing before fishing may be resumed.

(5) The Assistant Administrator may revoke, modify, or suspend the permit of a fishing vessel whose owner or operator falsifies or fails to submit the records and reports prescribed by this section, in accordance with the provisions of 50 CFR Part 621.

(b) *Fish dealer or processor reports.* (1) Any person who receives Atlantic butterfish for a commercial purpose from a fishing vessel subject to this part shall file a weekly report (Sunday through Saturday) to the Regional Director, on forms supplied by him, within 48 hours of the end of any week in which butterfish is received. This report shall include information on all first transfers, purchases, or receipts of butterfish and all other fish made during that week.

(2) Processing capacity. [Reserved]

(3) Inspection of records. [Reserved]

§ 657.6 Vessel identification.

(a) *Official number.* (1) Each fishing vessel subject to this part and over 25 feet in length shall display its Official Number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The Official Number is the documentation number issued by the U.S. Coast Guard for documented vessels or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

(2) The Official Number shall be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels over 25 feet in length.

(3) The Official Number must be in block Arabic numerals is contrasting color to the background.

(4) The Official Number shall be permanently affixed to or painted on the vessel. However, charter or party boats may use non-permanent markings to display the Official Number whenever the vessel is fishing for butterfish.

(b) *Vessel length.* The length of a vessel, for purposes of this section, is that length set forth in U.S. Coast Guard or State records.

(c) *Duties of operator.* The operator of each fishing vessel shall:

(1) Keep the Official Number clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, or its fishing gear obstructs the view of the Official Number from an enforcement vessel or aircraft.

§ 657.7 Prohibitions.

It is unlawful for any person to:

(a) Use any vessel for the taking, catching, harvesting, or landing of any Atlantic butterfish (except as provided for in § 657.4(a)), unless the vessel has a valid permit issued pursuant to this part, on board the vessel;

(b) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel;

(c) Falsify or fail to make, keep, maintain, or submit any fishing vessel record or fish dealer or processor report, or other record or report required by this part;

(d) Make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, landing, purchase, sale, or transfer of any butterfish;

(e) Fail to affix and maintain vessel markings as required by § 657.6;

(f) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land any Atlantic butterfish taken in violation of the Act, this part, or any regulation promulgated under the Act;

(g) Fish for, take, catch, or harvest any Atlantic butterfish from the FCZ after the fishery has been closed pursuant to § 657.23;

(h) Transfer directly or indirectly, or attempt to so transfer, any United States harvested butterfish to any foreign fishing vessel, while such vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Act, which authorizes the receipt by such vessel of the United States harvested butterfish;

(i) Refuse to permit an Authorized Officer to inspect any fishing vessel record;

(j) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purpose of conducting any search or inspection in connection with the enforcement of this Act, this part, or any other regulation promulgated under the Act;

(k) Fail to comply immediately with enforcement and boarding procedures specified in § 657.8;

(l) Forcibly assault, resist, oppose, impede, intimidate, threaten or interfere with an Authorized Officer in the conduct of any search or inspection under the Act;

(m) Resist a lawful arrest for any act prohibited by this part;

(n) Interfere with, obstruct, delay, or prevent by any means the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part;

(o) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this part;

(p) Violate any other provision of this part, the Act, or any regulation promulgated pursuant thereto.

§ 657.8 Enforcement.

(a) *General.* The operator of any fishing vessel subject to this part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing vessel record, and catch for purposes of enforcing the Act and this part.

(b) *Signals.* Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft authorized to enforce provisions of the Act, the operator of the fishing vessel shall be alert for communications conveying enforcement instruction. VHF-FM raidotelephone is the normal method of communication between vessels. Should radiotelephone communications fail, however, other methods of communication, including visual signals, may be employed. The following signals extracted from the International Code of Signals are among those which may be used, and are included here for the safety and information of fishing vessel operators:

(1) "L" means "You should stop your vessel instantly;"

(2) "SQ3" means "You should stop or heave to; I am going to board you; and

(3) "AA AA AA etc.," which is the call to an unknown station, to which the signaled vessel shall respond by illuminating the vessel's Official Number required by § 657.6.

(c) *Boarding.* A vessel signalled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the Authorized Officer and his party to come aboard;

(2) Provide a safe ladder for the Authorized Officer and the boarding party;

(3) When necessary to facilitate the boarding, or when requested by an Au-

thorized Officer, provide a man rope, safety line and illumination for the ladder; and

(4) Take such other actions as necessary to insure the safety of the Authorized Officer and his party to facilitate the boarding.

§ 657.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions, permit sanction provisions, and forfeiture provisions prescribed in the act, in 50 CFR Part 620 (Citations) and Part 621 (Civil Procedures).

Subpart B—Management Measures

§ 657.20 Fishing year.

The fishing year for Atlantic butterfish is the 12-month period beginning April 1 and ending on March 31 of the following fishing year.

§ 657.21 Allowable levels of harvest.

(a) *Harvest levels.* The total allowable levels of harvest of Atlantic butterfish on a fishing year basis is 11,000 metric tons (mt). The initial annual catch quota for vessels of the United States is 7,000 mt.

(b) *Territorial waters.* These regulations do not restrict harvests of Atlantic butterfish in the waters landward of the FCZ. Harvests from these waters, however, shall be subtracted from the annual domestic quotas set forth in paragraph (a) of this section.

§ 657.22 Allocations.

(a) *General.* This section establishes a procedure which will be followed to make allocations to foreign fishing vessels of part of the domestic quota that will not be harvested by fishermen during the fishing year.

(b) *Criteria.* The Assistant Administrator will determine the domestic harvest of butterfish by reviewing fishing vessel record and fish dealer/processor record data and any other relevant landings statistics for the first seven months of the fishing year (April 1-October 31). If reported domestic harvest (including off-loadings at sea) is equal to or greater than 40 percent of the annual domestic quota of 7,000 mt, no allocation will be made. If the reported domestic harvest for the first seven months of the fishing year is less than 40 percent of the annual domestic quota, the Assistant Administrator may allocate up to one-half the difference between the reported domestic harvest and the initial annual domestic quota in § 657.21(a).

(c) *Notice of intent.* If the Assistant Administrator determines that an allocation is to be made, he will publish in the FEDERAL REGISTER a notice proposing to allocate a specified amount of the unharvested portion of the domestic annual quota to the annual quota established for foreign nations. Notice of an intent to allocate will be sent to holders of permits issued under this part, and to agents of foreign fishing vessels permitted to fish for butterfish under 50 CFR Part 611, on or about the date of publication of the notice in the FEDERAL REGISTER.

(d) *Public comment.* The public will be given 15 days from the date of publication to submit written comments on the proposed allocation.

(e) *Consultation.* During the 15-day public comment period, the Assistant Administrator will consult with the Executive Director of the Mid-Atlantic Fishery Management Council on the consistency of the proposed allocation with the objectives of the FMP.

(f) *Final determination.* The Assistant Administrator will make a final determination of the amount of Atlantic butterfish to be allocated after taking into account:

(1) The intent and capability of U.S. fishing vessels to harvest Atlantic butterfish during the remainder of the fishing year;

(2) The consistency of any allocation with the objectives contained in the FMP;

(3) The current harvest of Atlantic butterfish by foreign nations as allowed pursuant to 50 CFR Part 611;

(4) The most recent information available concerning the biological status of the species of Atlantic butterfish; and

(5) Any other information determined by the Assistant Administrator to be relevant.

(g) *Notice of allocation.* The Assistant Administrator will publish a final notice of allocation in the Federal Register approximately 15 days prior to the effective date of the allocation. Comments received during the comment period, all relevant information used by the Assistant Administrator in making a final determination on allocations, and the most recent catch statistics available for the domestic harvest of Atlantic butterfish shall be summarized in the Federal Register notice of allocation.

(h) *Effective dates.* Any allocation of butterfish shall be effective on January 1 and remain in effect to the end of the fishing year on March 31.

§ 657.23 Closure of fishery.

(a) *General.* The Regional Director will periodically monitor catches and landings of Atlantic butterfish.

(b) *Decision to close.* When 80 percent of the initial annual domestic harvest level specified in § 657.21 has been harvested, the Assistant Administrator shall close the fishery for the remainder of the fishing year.

(c) *Notice of closure.* If the Assistant Administrator determines that a closure of the butterfish fishery is necessary, he shall:

(1) Notify in advance the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils of the closure;

(2) Mail notifications of the closure to all holders of permits issued under § 657.4 at least 72 hours prior to the effective date of the closure; and

(3) Publish a notice of closure in the Federal Register.

(d) *Incidental Catch.* During a period of closure, fishing vessels may catch, take, or harvest Atlantic butterfish incidental to fishing for other species of fish, provided that the amount of Atlantic butterfish constitutes no more than 10 percent by weight of the total catch of all other fish on board the vessel at the end of any fishing trip.

§ 657.24 Size restrictions. [Reserved]

§ 657.25 Gear/vessel equipment restrictions. [Reserved]

§ 657.26 Area/time restrictions. [Reserved]

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

Subpart A—General Measures

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Authority: 16 U.S.C. 1801 et seq.

Source: 46 FR 27494, May 20, 1981, unless otherwise noted.

Subpart A—General Measures

§ 658.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, developed by the Gulf of Mexico Fishery Management Council under the Magnuson Fishery Conservation and Management Act.

(b) The regulations in this part govern fishing for brown shrimp, white shrimp, pink shrimp, royal red shrimp, seabob shrimp, and rock shrimp by vessels of the United States within that portion of the Gulf of Mexico over which the United States exercises exclusive fishery management authority.

(c) Regulations governing foreign fishing for royal red shrimp appear in 50 CFR Part 611. Appendix I to § 611.20 contains the total allowable level of foreign fishing for royal red shrimp.

§ 658.2 Definitions.

In addition to the definitions in the Act, the terms used in this part shall have the following meanings:

Act means the Magnuson fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the Coast Guard to enforce the provisions of the Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Center Director means the Center Director, Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149. Telephone 305-361-5761.

Catch, take, or harvest includes, but is not limited to, any activity which results in bringing any shrimp on board a vessel.

Fishery conservation zone (FCZ) means that area adjacent to the territorial sea of the constituent States of the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishery management plan (FMP) means the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of shrimp;

(b) The attempted catching, taking, or harvesting of shrimp;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of shrimp;

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Gulf of Mexico means the geographic area of authority of the Gulf of Mexico Fishery Management Council.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of that vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means the Regional Director, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702, or a designee.

Shrimp means the following species:

Brown shrimp, *Penaeus aztecus*
White shrimp, *P. setiferus*

Pink shrimp, *P. duorarum*

Seabob shrimp, *Xiphopeneus kroyeri*

Rock shrimp, *Sicyonia brevirostris*

Royal red shrimp, *Hymenopenaeus robustus*

United States harvested shrimp means shrimp caught, taken, or harvested by vessels of the United States in the Gulf of Mexico, whether or not such shrimp is landed in the United States.

Vessel of the United States means:

(a) A vessel documented or numbered by the U.S. Coast Guard under United States law; or

(b) Any vessel under five net tons registered under the laws of any State.

§ 658.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) The regulations found in this part are intended to be compatible with regulations pertaining to the Everglades National Park in the State of Florida and Fort Jefferson National Monument. These regulations which prohibit commercial shrimping are found at 36 CFR 7.45 and 36 CFR 7.27, respectively.

(c) Certain responsibilities relating to data collection and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

§ 658.4 Vessel permits and fees.

No permit is required for vessels of the United States fishing for shrimp under this part.

§ 658.5 Recordkeeping and reporting. [Reserved]

§ 658.6 Vessel identification.

(a) *Offical number.* Each vessel of the United States engaged in the shrimp fishery in the Gulf of Mexico FCZ shall:

(1) Display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the documentation number issued by the Coast Guard for documented vessels or the registration number issued by a State or the Coast Guard for undocumented vessels.

(2) The official number must be in block arabic numerals in contrasting color to the background.

(3) The official number shall be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels.

(4) The official number shall be permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel shall:

(1) Keep the registration number clearly legible and in good repair, and

(2) Insure that no part of the fishing vessel, its rigging, or its fishing gear obstructs the view of the official number from any enforcement vessel or aircraft.

§ 658.7 Prohibitions.

It is unlawful for any person to:

(a) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any shrimp taken or retained in violation of the Act, this part, or of any other regulation promulgated under the Act;

(b) Trawl in a closed area or during a closed season within the FCZ, except as allowed under § 658.24(a);

(c) Transfer directly or indirectly, or attempt to so transfer, any United States harvested shrimp to any foreign fishing vessel, while such vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Act which authorizes the receipt by such vessel of United States harvested shrimp;

(d) Falsify or fail to affix and maintain vessel markings as required by § 658.6;

(e) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Act, this part, or any other regulation issued under the Act;

(f) Fail to comply immediately with enforcement and boarding procedures specified in § 658.8;

(g) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any Authorized Officer in the conduct of any search or inspection under the Act;

(h) Resist a lawful arrest for any act prohibited by this part;

(i) Interfere with, delay, or prevent by any means the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part;

(j) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part;

(k) Interfere with, obstruct, delay, or in any other manner prevent the seizure of illegally taken shrimp or the final disposition of such shrimp through the sale of the shrimp; or

(l) Violate any other provision of this part, the Act, or any regulation issued under the Act.

§ 658.8 Enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to this part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch for purposes of enforcing the Act and this part.

(b) *Signals.* Upon being approached by a U.S. Coast Guard vessel or aircraft, or any other vessel or aircraft authorized to enforce the Act, the operator of a fishing vessel shall be alert for communications conveying enforcement instructions. The VHF-FM radiotelephone is the normal method of communicating between vessels. Should radiotelephone communications fail, however, other methods of communicating between vessels, including visual signals, may be employed. The following signals extracted from the International Code of Signals are among those which may be used, and are included here for the safety and information of fishing vessel operators:

(1) "L" meaning "You should stop your vessel instantly,"

(2) "SQ3" meaning "You should stop or heave to; I am going to board you,"

(3) "AA AA AA etc." which is the call to an unknown station, to which the signaled vessel should respond by illuminating the number required by § 658.6, and

(4) "RYCY" meaning "You should proceed at slow speed, a boat is coming to you."

(c) *Boarding.* A vessel signaled to stop or heave to for boarding shall:

(1) Guard Channel 16, VHF-FM, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to permit the Authorized Officer and his party to come aboard;

(3) Provide a safe ladder, if required, for the Authorized Officer and his party to come aboard;

(4) When necessary, to facilitate the boarding and/or when requested by an Authorized Officer, provide a man rope or safety line and illumination for the ladder; and

(5) Take such other actions as necessary to ensure the safety of the Authorized Officer and his party and to facilitate the boarding.

§ 658.9 Penalties.

Any person or fishing vessel found to be in violation of this part is subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, and to 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 658.20 Fishing year.

The fishing year for all species of shrimp, except royal red shrimp, begins on May 1 and ends on April 30. The fishing year for royal red shrimp begins on January 1 and ends on December 31.

§ 658.21 Allowable levels of harvest.

(a) *Catch quotas.* The domestic quota for royal red shrimp is 111.6 metric tons. There is no domestic quota for other species of shrimp.

(b) *Territorial waters.* These regulations do not limit the harvest of shrimp resources in waters landward of the FCZ. However, harvest from these waters will be taken into account in the calculation of the maximum sustainable yield and optimum yield from the fishery.

(c) *Closure.* When the domestic quota for royal red shrimp is reached, the Regional Director shall close the fishery by publishing a notice in the FEDERAL REGISTER.

§ 658.22 Tortugas Shrimp Sanctuary.

The area commonly known as the "Tortugas Shrimp Sanctuary," off the State of Florida, is closed to all trawl fishing. The area is that part of the fishery conservation zone shoreward of a line connecting the following points (see Figure 1):

Point	Latitude	Longitude	Common name
N	25°52.9′N	81°37.95′W	Coon Key Light.
F	24°50.7′N	81°51.3′W	
G	24°40.1′N	82°26.7′W	New Grounds Shoals Light.
H	24°34.7′N	82°35.1′W	Rebecca Shoals Light.
P	24°35′N	82°08′W	Marquesas Keys.

§ 658.23 Stone crab area closure.

Between January 1 and May 20, the area described in this paragraph is closed to trawl gear, including live bait gear. The area is that part of the fishery conservation zone shoreward of a line connecting the following points (see Figure 2):

Point	Latitude	Longitude	Common name
B	26°16′N	81°58.5′W	
C	26°00′N	82°04′W	
D	25°09′N	81°47.6′W	
E	24°54.5′N	81°50.5′W	
M	24°41.9′N	81°40.5′W	Snipe Point.

§ 658.24 Texas closure.

(a) *Area and season restrictions.* Between June 1 and July 15, the area described in this paragraph is closed to all trawl fishing, except that a vessel may fish for royal red shrimp beyond the 100-fathom depth contour. The area is that part of the fishery conservation zone off the State of Texas west of a line connecting point A (29°32.1′N. lat., 93°47.7′W. long.) to point B (26°11.4′N. lat., 92°53′W. long.) (see Figure 3).

(b) *Adjustment of dates.* The Regional Director may adjust the closing or opening date by as much as 15 days, to provide an earlier, later, or longer closure; but the duration of the closure may not exceed 60 days, nor be less than 45 days.

(1) The Regional Director must base an adjustment of the closing or opening date on the following criteria:

(i) Biological data collected by the Texas Parks and Wildlife Department (TPWD) and used to predict when brown shrimp in the central and northern bays of Texas will reach a total length of 80 to 90 mm; and

(ii) The strength of outgoing tides at the time predicted under paragraph (b)(1)(i) of this section; and

(iii) Other ecological data relevant to the timing or duration of the closure.

(2) The Regional Director, after consulting with the TPWD, may adjust the closing or opening date by issuing a field order. The order will specify the adjusted date and the reasons for the adjustment.

(3) A field order advancing the closing date or delaying the opening date must be available to the public for 72 hours before its effective date. A field order delaying the closing date or advancing the opening date must be available to the public for 24 hours before its effective date.

(4) A field order may be made available to the public by any of the following methods:

(i) Procedures customarily used by the TPWD for posting and publicizing similar notices of opening or closure;

(ii) Publication of a notice in a newspaper of major circulation in each of the following cities: Brownsville, TX; Aransas Pass, TX; Galveston, TX; Corpus Christi, TX; Freeport, TX; Port Arthur, TX; Cameron, LA; and Morgan City, LA;

(iii) Notification of shrimp fishery organizations in all the States bordering the Gulf of Mexico;

(iv) Broadcast of a notice at time intervals, channels, and frequencies customarily used by the TPWD to broadcast similar notices of opening or closure.

§ 658.25 Size restrictions.

There are no minimum size requirements for shrimp harvested in the fishery conservation zone.

§ 658.26 Specifically authorized activities.

The Regional Director may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

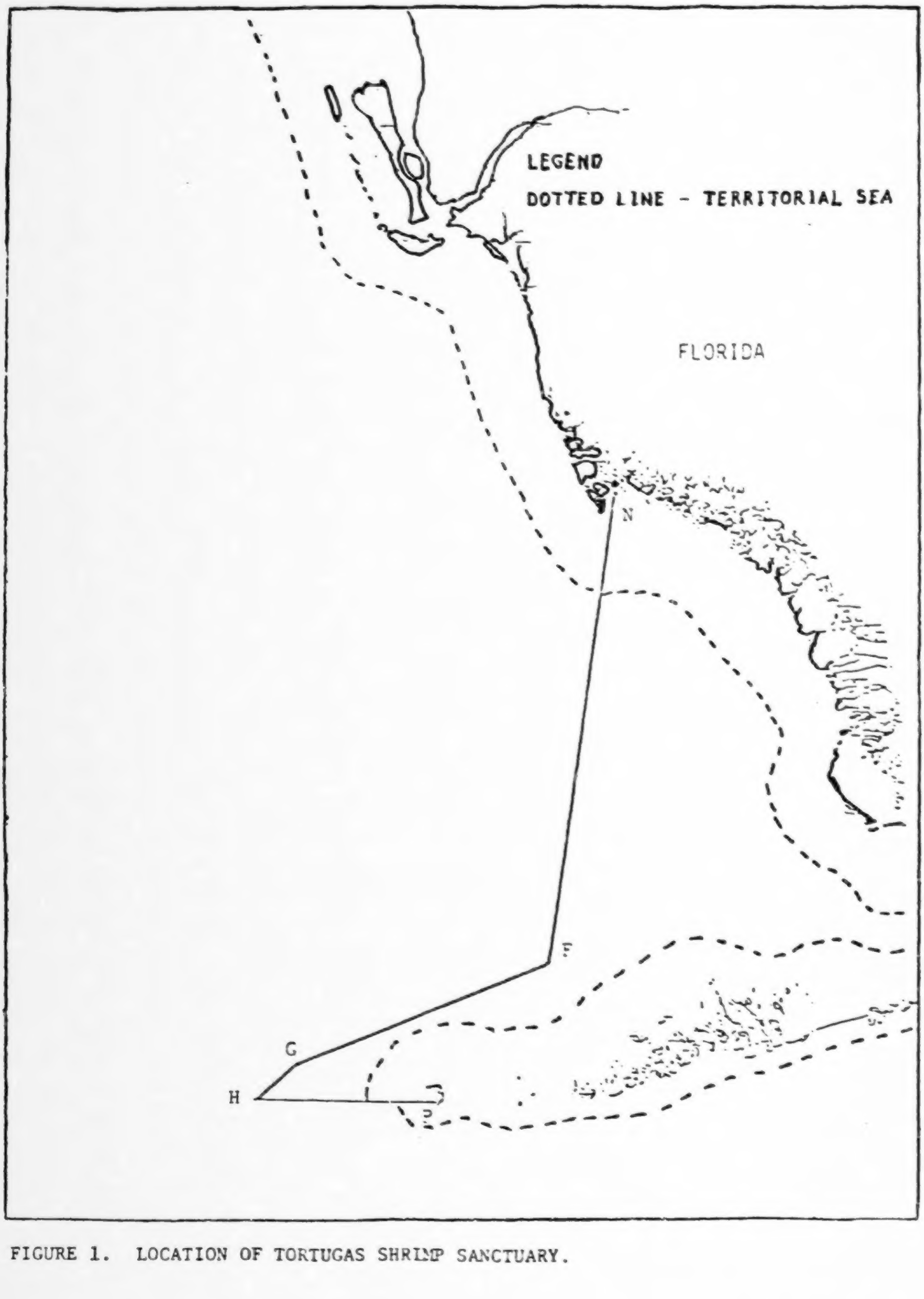
LEGEND
DOTTED LINE - TERRITORIAL SEA
FLORIDA
N
F
G
H

FIGURE 1. LOCATION OF TORTUGAS SHRIMP SANCTUARY.

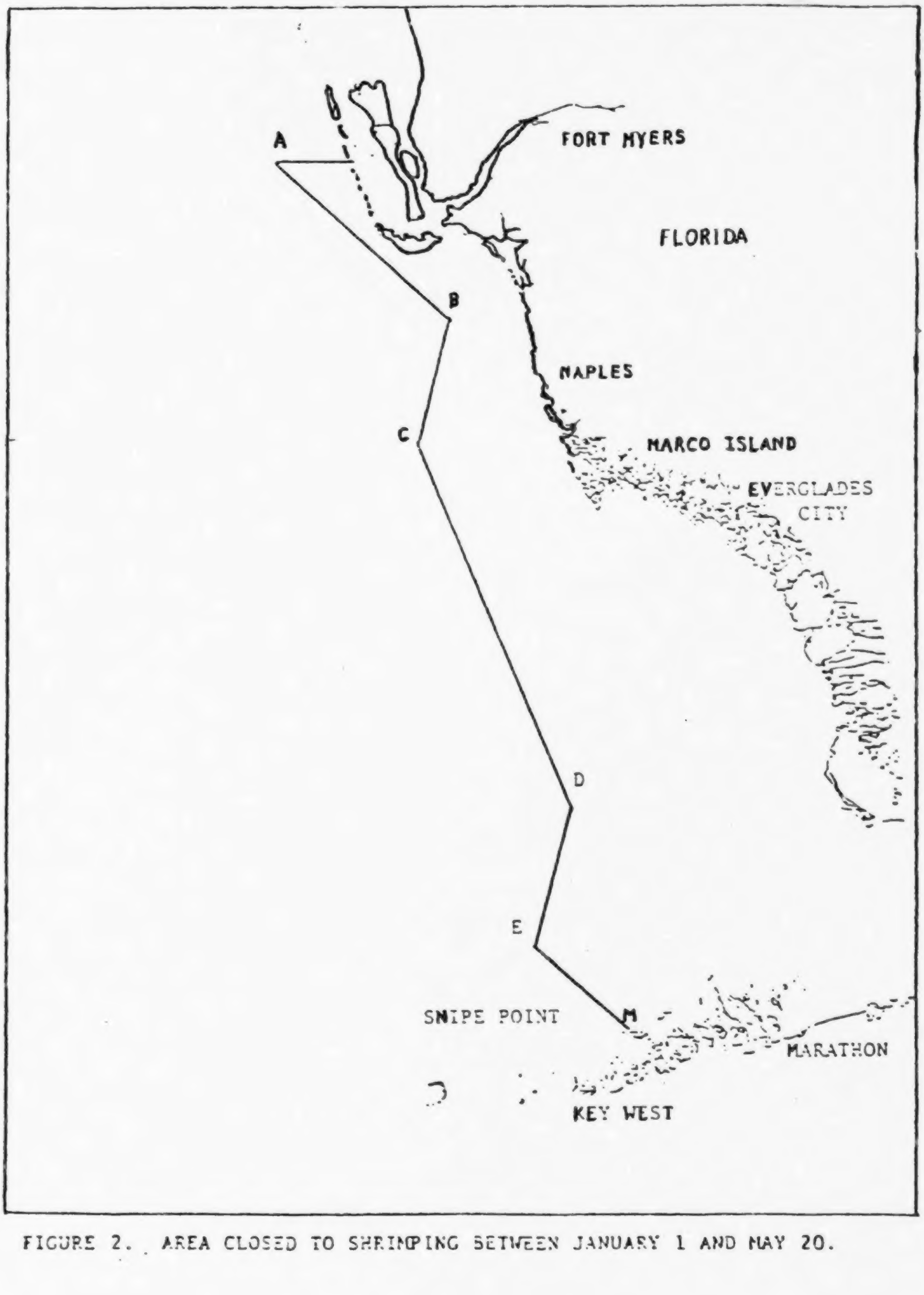
A
FORT MYERS
FLORIDA
B
NAPLES
C
MARCO ISLAND
EVERGLADES CITY
D
E
SNIPE POINT
M
MARATHON
KEY WEST

FIGURE 2. AREA CLOSED TO SHRIMPING BETWEEN JANUARY 1 AND MAY 20.

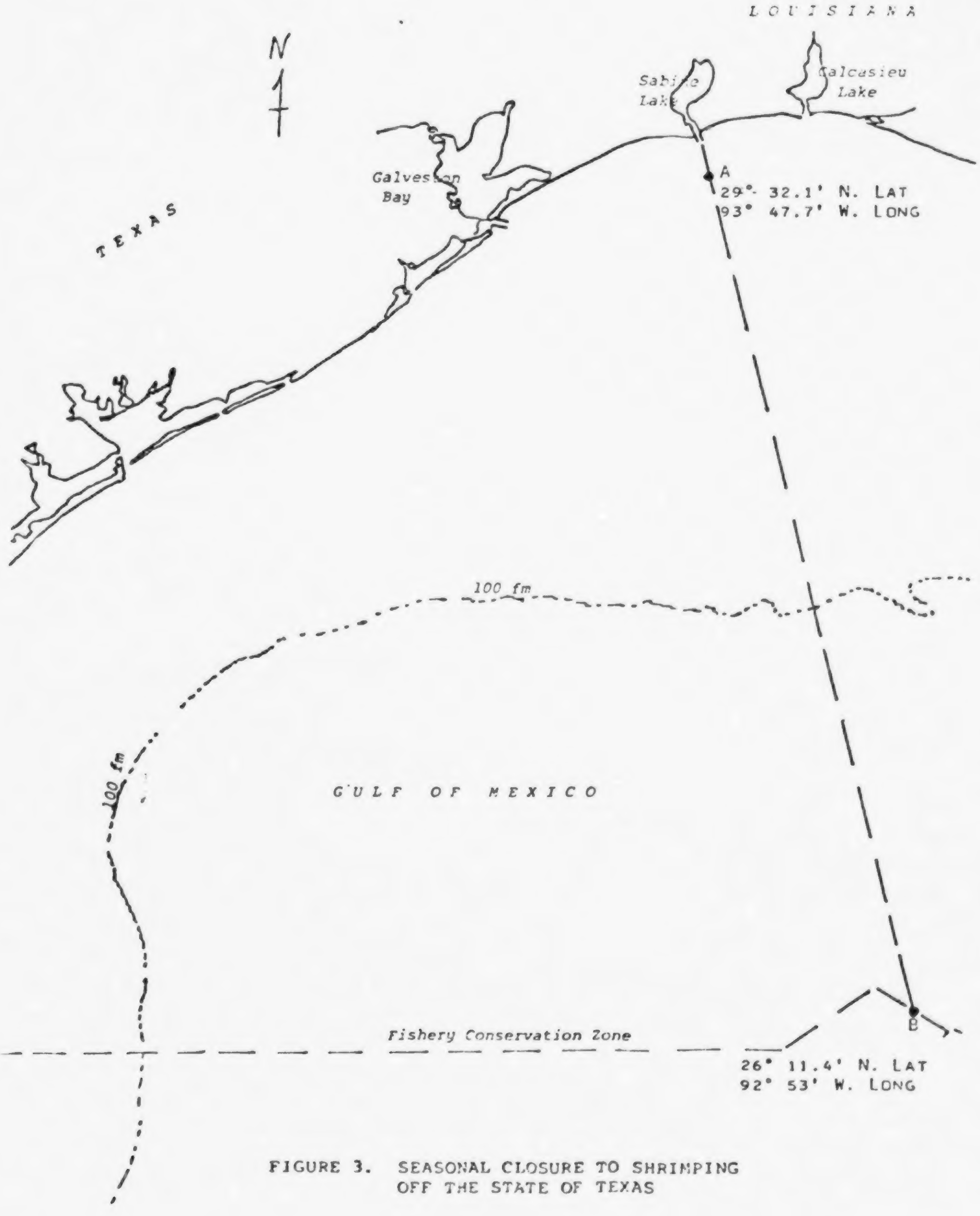
LOUISIANA
N
Sabine Lake
Calcasieu Lake
Galveston Bay
TEXAS
A
29° 32.1' N. LAT
93° 47.7' W. LONG
100 fm
100 fm
GULF OF MEXICO
Fishery Conservation Zone
B
26° 11.4' N. LAT
92° 53' W. LONG

FIGURE 3. SEASONAL CLOSURE TO SHRIMPING OFF THE STATE OF TEXAS

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF CALIFORNIA, OREGON, AND WASHINGTON

Sec.
661.1 Purpose.
661.2 Relation to U.S.-Canada sockeye and pink salmon convention.
661.3 Relation to State laws.
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661.9 Penalties.
661.10 Commercial fishing.
661.11 Recreational fishing.
661.12 In-season adjustment.
661.13 Treaty Indian fishing.
661.14 Emergency regulations.
661.15 Catch reports.
661.16 Experimental fisheries.
661.17 Scientific research.

AUTHORITY: 16 U.S.C. 1801 et seq.

SOURCE: 46 FR 30638, June 10, 1981, and 46 FR 44991, Sept. 9, 1981, unless otherwise noted.

§ 661.1 Purpose.

The purpose of this Part 661 is to provide for the management of the salmon fisheries off the coasts of Washington, Oregon and California in the Fishery Conservation Zone (the FCZ, also known as the 3-to-200 mile zone) over which the United States exercises exclusive fishery management authority (i.e., the Pacific Fishery Management Council Fishery Management Area). This Part 661 implements the Pacific Council's Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California, pursuant to authority conferred by the Magnuson Fishery Conservation and Management Act.

§ 661.2 Relation to U.S.-Canada sockeye and pink salmon convention.

This Part 661 does not apply to fishing for pink and sockeye salmon conducted under the Convention for the Protection, Preservation and Extension of the Sockeye Salmon Fishery of the Fraser River System as amended by the Pink Salmon Protocol, in U.S. Convention Waters between 48° North latitude and the provisional international boundary between the United States and Canada.

§ 661.3 Relation to State laws.

This Part 661 recognizes that any state law which pertains to vessels registered under the laws of that state while in the Fishery Management Area, and which is consistent with the Salmon Management Plan, including any state landing law, shall continue to have force and effect with respect to fishing activities addressed herein.

§ 661.4 Effective dates.

These regulations shall be effective until superceded or otherwise modified, except that those portions of §§ 661.10-661.12 relating to Sub-area C (the FCZ adjacent to California) shall remain in effect no longer than the 1981 fishing season, after which time those portions of §§ 661.10-661.12 of the 1980 ocean salmon fishing regulations (45 FR 50764) relating to the FCZ adjacent to California shall again become effective for that area unless superseded or otherwise modified.

[46 FR 37706, July 22, 1981]

§ 661.5 Definitions.

(a) *Act*—means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801-1882.

(b) *Authorized Officer*—means: (1) Any commissioned, warrant, or petty officer of the Coast Guard;

(2) Any certified enforcement agent or special agent of the National Marine Fisheries Service;

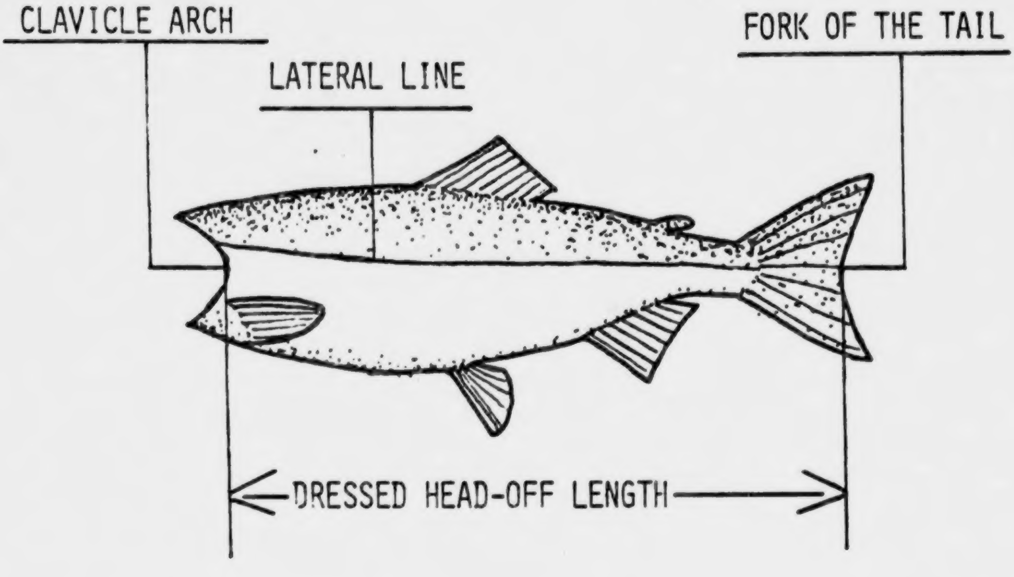
(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Secretary of Transportation to enforce the provisions of the Act; and

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (b)(1) of this section.

(c) *Commercial fishing*—means fishing with troll fishing gear as defined in paragraph (v) of this section, or fishing for the purpose of sale or barter of the catch.

(d) *Council*—means the Pacific Management Council.

(e) *Dressed, head-off length of salmon*—means the shortest distance between the mid-point of the clavicle arch (see illustration) and the fork of the tail, measured along the lateral line while the fish is lying on its side, without resort of any force or mutilation of the fish other than removal of the head, gills, and entrails.



(f) *Dressed, head-off salmon*—means salmon that have been beheaded, gilled and gutted, without further separation of vertebrae, and are either being prepared for on-board freezing, or are frozen and will remain frozen until landed.

(g) *Fishing*—means:

(1) The catching, taking or harvesting of fish;

(2) The attempted catching, taking or harvesting of fish; or

(3) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish, or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraph (g)(1) through (g)(3) of this section.

(h) *Fishing Vessel*—means any boat, ship or, other craft which is used for, equipped to be used for, or of a type which is normally used for fishing.

(i) *Freezer Trolling Vessel*—means a fishing vessel, equipped with troll fishing gear, which has a present capability for (1) on-board freezing of the catch, *and* (2) storage of the fish in a frozen condition until they are landed.

(j) *Fishery Management Area*—means the Fishery Conservation Zone (FCZ) off the coast of Washington, Oregon and California between 3 and 200 miles offshore, and bounded on the north by the Provisional International Boundary between the U.S. and Canada, and bounded on the south by International Boundary between the U.S. and Mexico.

(k) *Land* or *Landing*—means bringing fish to shore or off-loading fish from a fishing vessel.

(l) *ODF& W*—means the Oregon Department of Fish and Wildlife.

(m) *Oregon Production Index (OPI) Area*—means marine waters of the territorial sea and the FCZ south of a line extended due west from Leadbetter Point, Washington, at 46°38'10" N. latitude.

(n) *Recreational Fishing*—means fishing with recreational fishing gear as defined in paragraph (o) of this section and not for the purpose of sale or barter.

(o) *Recreation fishing gear*—means conventional angling tackle consisting of a rod, reel, line, and hooks with bait or lures attached.

(p) *Regional Director*—means the Regional Director of the Northwest Region of the National Marine Fisheries Service, or his designee.

(q) *Salmon*—means any anadromous species of the family Salmonidae and genus *Oncorhynchus*, commonly known as Pacific salmon, including but not limited to:

Chinook (King) salmon—*Oncorhynchus tshawytscha.*

Coho (Silver) salmon—*Oncorhynchus kisutch.*

Pink (Humpback) salmon—*Oncorhynchus gorbuscha.*

Chum (Dog) salmon—*Oncorhynchus keta.*

Sockeye (Red) salmon—*Oncorhynchus nerka.*

(r) *Secretary*—means the Secretary of Commerce or a designee.

(s) *Single, barbless hook*—means a hook with a single shank and point, with no secondary point or barb curving or projecting in any other direction. Hooks manufactured with barbs can be made "barbless" by forcing the point of the barb flat against the main part of the point.

(t) *Sub-area*—means one of the three salmon management subdivisions of the Fishery Management Area, as specifically described in § 661.6(a).

(u) *Total length of salmon*—means the shortest distance between the tip of the snout or jaw (whichever extends furthest while the mouth is closed) and the tip of the longest lobe of the tail, without resort to any force or mutilation of the salmon other than fanning or swinging the tail.

(v) *Troll fishing gear*—means fishing gear that consists of one or more lines that drag hooks with bait or lures behind a moving fishing vessel, *and* which lines originate from a spool or receptacle which is affixed to the vessel during the fishing operation, which spool or receptacle is not disengaged from the vessel at any time during the fishing operation.

(w) *Washington Production Projection (WPP) Area*—means marine waters of the territorial sea and the FCZ, between the U.S.-Canada boundary [as defined § 661.6(a)(1) (i) and (ii)] and a line extended due west from Cape Falcon, Oregon, at 45°46'00", N. latitude.

(x) *WDF*—means the Washington State Department of Fisheries.

§ 661.6 Salmon management sub-areas.

(a) The Fishery Management Area shall be divided into the following Sub-Areas for regulation of commercial and recreational salmon fishing, with the following designations and boundaries:

(1) Sub-Area A:

(i) Northeastern boundary—that part of a line connecting the light on Tatoosh Island, Washington, with the light on Bonilla Point on Vancouver Island, British Columbia, southerly of the International Boundary between the U.S. and Canada (at 48°29'37" N. lat., 124°43'33" W. long.), and northerly of the point where that line intersects with the boundary of the U.S. territorial sea.

(ii) Northern and northwestern boundary is a line[1] connecting the following coordinates:

48°29'37.19" N. lat.,	124°43'33.19" W. long.;
48°30'11" N. lat.,	124°47'13" W. long.;
48°30'22" N. lat.,	124°50'21" W. long.;
48°30'14" N. lat.,	124°52'52" W. long.;
48°29'57" N. lat.,	124°59'14" W. long.;
48°29'44" N. lat.,	125°00'06" W. long.;
48°28'09" N. lat.,	125°05'47" W. long.;
48°27'10" N. lat.,	125°08'25" W. long.;
48°26'47" N. lat.,	125°09'12" W. long.;
48°20'16" N. lat.,	125°22'48" W. long.;
48°18'22" N. lat.,	125°29'58" W. long.;
48°11'05" N. lat.,	125°53'48" W. long.;
47°49'15" N. lat.,	126°40'57" W. long.;
47°36'47" N. lat.,	127°11'58" W. long.;
47°22'00" N. lat.,	127°41'23" W. long.;
46°42'05" N. lat.,	128°51'56" W. long.;
46°31'47" N. lat.,	129°07'39" W. long.;

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[1] The line joining these coordinates is the provisional international boundary of the U.S. FCZ as shown on NOAA/NOS Charts #18480 and #18002.

(iii) Southern boundary: a line extended due West from Cape Falcon, Oregon, at 45°46′00″ N. latitude.

(2) Sub-Area B:

(i) Northern Boundary: A line extended due west from Cape Falcon, Oregon, at 45°46′00″ N. latitude.

(ii) Southern Boundary: A line extended due west from the Oregon-California border at 42°00′00″ N. latitude.

(3) Sub-Area C:

(i) Northern Boundary: A line extended due west from the Oregon-California border at 42°00′00″ N. latitude.

(ii) Southern Boundary: The United States-Mexico International Boundary, which is a line connecting the following coordinates:

32°35′22″ N. lat.	117°27′49″ W. long.;
32°37′37″ N. lat.	117°49′31″ W. long.;
31°07′58″ N. lat.	118°36′18″ W. long.;
30°32′31″ N. lat.	121°51′58″ W. long.

(b) Any person fishing subject to this Part 661 shall be bound by the above described international boundaries, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are published by the United States.

(c) The inner boundary of the Fishery Management Area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3-mile limit").

(d) The outer boundary of the Fishery Management Area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

§ 661.7 General restrictions.

The following restrictions apply to all salmon fishing in Sub-Areas A through C, except that the restrictions in this Part 661 shall not apply to fishing for pink and sockeye salmon regulated under the Convention for the Protection, Preservation, and Extension of the Sockeye Salmon Fishery of the Fraser River System, as amended by the Pink Salmon Protocol, north of 48° north latitude.

(a) No person shall use nets to fish for salmon in the Fishery Management Area, except that a hand-held net may be used to bring hooked salmon on board a vessel.

(b) No person shall fish for, or take and retain any species of salmon:

(1) During closed seasons or in closed areas specified in this part;

(2) Once any catch limit specified in this part is attained;

(3) By means of gear or methods other than recreational fishing gear or troll fishing gear as defined in this Part 661; or

(4) In violation of any Field order issued under § 661.12.

(c) No person shall take and retain any species of salmon which is less than the minimum length specified in this part [See §§ 661.7 (d), (e), (f), and (h); § 661.10(c); and § 661.11(c), regarding minimum lengths for commercially and recreationally caught fish, and exceptions for "Dressed, head-off" salmon aboard a "Freezer Trolling Vessel"].

(d) No person shall possess on board a fishing vessel in the Fishery Management Area any salmon for which a minimum total length is set by these regulations, in such condition that its total length cannot be determined; except that "Dressed, head-off" salmon [as defined in § 661.5(f)] may be possessed aboard a "Freezer Trolling Vessel" [as defined in § 661.5(i)]. *Exception:* See paragraph (h) of this section.

(e) No person while fishing shall possess on a fishing vessel during an open season in any Sub-Area, any salmon that is less than the minimum total length for that species in that Sub-area; except that "Dressed, head-off" Salmon [as defined in § 661.5(f)] aboard a "Freezer Trolling Vessel" [as defined in § 661.5(i)] shall not be less than the "Dressed, head-off length" [as defined in § 661.5(e)] for that species in that sub-area. *Exception:* See paragraph (h) of this section.

(f) No person, while on board a fishing vessel, shall multilate or otherwise disfigure any salmon in a manner that extends its length to conform to any minimum "Total length" or "Dressed, head-off length" requirement specified in this part. Salmon may be gilled and gutted, if in doing so there is no separation of vertebrae. In addition, on board a "Freezer Trolling Vessel" [as defined in § 615.5(i)] salmon may be prepared [as defined in § 661.5(f)] for on-board freezing, if in doing so there is no further separation of vertebrae. *Exception:* See paragraph (h) of this section.

(g) No person shall fail to return to the water immediately and with the least possible injury any salmon the retention of which is prohibited by this part.

(h) No person shall remove the head of any salmon caught in the Fishery Management Area, nor possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin, which missing fin indicates that a Coded Wire Tag has been implanted in the head of the fish.

(i) No person shall possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land, any species of salmon or salmon part which was taken or retained in violation of the Act, this part 661, or any regulation issued under the Act.

§ 661.8 Facilitation of enforcement.

(a) No person shall:

(1) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this part, or any other regulation issued under the Act;

(2) Forcibly assault, resist, oppose, impede, intimidate or interfere with any Authorized Officer in the conduct of any search or inspection described in paragraph (a)(1) of this section;

(3) Resist a lawful arrest for any act prohibited by this part; or

(4) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part.

(b) Each person aboard a fishing vessel shall comply immediately with instructions given by Authorized Officers to facilitate safe boarding and inspection of the vessel for purposes of enforcing the Act and this part.

§ 661.9 Penalties.

Any person or fishing vessel found to be in violation of this Part 661 will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act.

§ 661.10 Commercial fishing

(a) *Open seasons and areas.* The Fishery Management Area is closed to commercial salmon fishing except as opened by this Part 661 or superseding regulations. All open fishing periods shall commence at 0001 hours and terminate at 2400 hours local time on the dates specified herein.

(1) Sub-Area A (U.S.-Canada Border to Cape Falcon, Oregon):

(i) The season for all salmon species, except coho, shall begin on May 1, and terminate on May 31.

(ii) The season for all salmon species, including coho, shall begin on July 15, and terminate on September 1.

(2) Sub-Area B (Cape Falcon to the Oregon-California border):

(i) The season for all salmon species, except coho, shall begin on May 1, and terminate on May 31.

(ii) The season for all salmon species, including coho, shall begin on July 1, and terminate on September 8.

(iii) The season for all salmon species, except coho, shall begin on September 9, and terminate on October 31.

(iv) If the July 1—September 8 season is terminated prior to September 8 pursuant to § 661.12, then a season for all salmon species, except coho, shall begin on the date of termination and continue until September 8 in that part of Sub-Area B between Cape Falcon and Cape Sebastian (at 42°19′26″ N. lat.). During such season, no person shall use any fishing gear other than hooks with whole, natural bait, or salmon plugs at least five (5) inches in length.

(3) Sub-Area C (Oregon-California border to the U.S.-Mexico border):

(i) The season for all salmon species, except coho, shall begin on May 1, and terminate on May 15.

(ii) The season for all salmon species, including coho, shall begin on May 16, and terminate on May 31.

(iii) The season for all salmon species including coho, shall begin on July 1, and terminate on September 30.

(b) *Gear restrictions.* (1) No person shall engage in commercial salmon fishing using other than troll fishing gear [as defined in § 661.5(v)] in the Fishery Management Area; however in Subarea C, troll fishing gear need to be affixed to the fishing vessel as specified in § 661.5(v).

(2) No person shall engage in commercial salmon fishing in the Fishery Management Area using other than single, barbless hooks [as defined in § 661.5(s)] prior to July 15 in Subarea A, prior to July 1 in Subarea B, or prior to May 16 in Subarea C, except that bait hooks with natural bait attached as the primary attraction and hooks on artificial salmon plugs may be barbed. Spoons, wobblers, dodgers, flies and flexible plastic lures shall not be considered artificial salmon plugs under this sub-paragraph, and therefore must be equipped with barbless hooks in all Subareas during the time periods described in this paragraph § 661.10(b)(2).

(c) *Length Restrictions.* Minimum total lengths of salmon and minimum dressed, head-off lengths of salmon are as follows:

	Minimum total length [1]	Minimum dressed head-off length [1]
Subarea A:		
Chinook	28	21½
Coho	16	12
Subarea B:		
Chinook	26	19½
Coho	16	12
Subarea C:		
Chinook	26	19½
Coho	22	16½
All subareas:		
Species other than Chinook and Coho	None	None

[1] In inches.

(d) *Steelhead.* No person engaged in commercial salmon fishing shall take and retain, or possess, any steelhead (*Salmo gairdneri*) within the Fishery Management Area.

(e) *Restriction on use of commercial troll fishing gear for recreational fishing.* No person while on a fishing vessel with troll fishing gear on board shall use any part of that troll fishing gear to engage in recreational fishing for salmon.

[46 FR 30638, June 10, 1981, as amended at 46 FR 44491, Sept. 9, 1981]

§ 661.11 Recreational fishing.

(a) *Open seasons and areas.* The Fishery Management Area is closed to recreational salmon fishing except as opened by this Part 661 or by superseding regulations. All seasons shall begin at 0001 hours and terminate at 2400 hours local time on the dates specified herein.

(1) In Subarea A (U.S.-Canada border to Cape Falcon, Oregon), the season for all salmon species shall begin on May 23 and terminate on September 7.

(2) In Subarea B (Cape Falcon to Oregon-California border), the season for all salmon species shall begin on May 15 and terminate on September 20.

(3) In that part of Subarea B between the Oregon-California border and Cape Blanco (42°15′14″ N. lat.), a season for all species of salmon, except coho, shall begin on September 21 and terminate on October 31.

(4) In Subarea C (Oregon-California border to the U.S.-Mexico border) the season for all salmon species shall begin on the Saturday closest to February 15 and terminate on the Sunday closest to November 15. (For calendar year 1981, the opening date is February 14 and the closing date is November 15.)

(b) *Gear restrictions.*

(1) No person shall engage in recreational salmon fishing in the Fishery Management Area using other than recreational fishing gear [as defined in § 661.5(o)], to which may be attached not more than one artificial lure or natural bait, with no more than four single or multiple hooks.

(2) No person shall use more than one rod and line for recreational salmon fishing in Subareas A and B; there shall be no limit to the number of rods and/or lines used for recreational salmon fishing in Subarea C.

(3) No person engaged in recreational fishing for salmon in Subarea C

may use weights of more than four (4) pounds attached directly to the line.

(4) Recreational fishing gear (as defined in § 661.5(o)) shall be held by hand by the angler while the angler is playing a hooked fish and reducing it to possession.

(c) *Length restrictions.* Minimum total lengths of salmon are as follows:

	Minimum total length (in inches)
Subarea A:	
Chinook	24
Coho: FCZ off Washington	20
Coho: FCZ off Oregon	16
Subarea B:	
Chinook	22
Coho	16
Subarea C:	
Chinook and Coho	[1] 22
All subareas:	
Species other than Chinook and Coho	None

[1] Except that one chinook or coho salmon per day may be less than 22 inches but not less than 20 inches.

(d) *Catch limits.* No person shall fish for, or take and retain, or possess more than two salmon per day while recreationally fishing in the Fishery Management Area; *except* that three salmon, only two of which may be chinook or coho, may be taken and retained, or possessed per day while recreationally fishing in the area between the mouth of the Queets River (47°31′42″ N. lat.) and the U.S.-Canada border (WDF Salmon Punch-card Areas 3 and 4).

§ 661.12 In-season adjustment.

(a) *Automatic fishing season closures based on harvest guidelines.* Harvest guidelines for salmon fisheries subject to this part are:

(1) The WPP Area (U.S.-Canada border to Cape Falcon, Oregon): The total harvest quota for coho salmon has been established at 620,000, of which 40 percent or 248,000 coho are allocated to the recreational fishery and 60 percent or 372,000 to the commercial fishery.

(2) The OPI south of Cape Falcon, including California: The total harvest quota for coho salmon has been established at 772,000 coho salmon, of which 29 percent or 224,000 salmon are allocated to the recreational fishery, and 71 percent or 548,000 coho to the commercial fishery; *Provided,* That the 548,000 coho allocated to the commercial fishery shall be reduced by the number of coho projected to be taken incidentally during the open season specified in § 661.10(a)(2)(iv).

(3) The California Area (marine waters of the territorial sea and the FCZ between the Oregon-California border and the U.S.-Mexico Border):

(i) For that part of the California Area north of Point Arena (38°57′20″ N. lat.) the total harvest quota for chinook salmon has been established at 315,000 salmon, with 300,000 allocated to the commercial fishery and 15,000 to the recreational fishery.

(ii) For that part of the California Area south of Point Arena, the total harvest quota for chinook salmon has been established at 380,000 salmon with 265,000 allocated to the commercial fishery and 115,000 to the recreational fishery.

(4) When a harvest guideline for the commercial, the recreational fishery, or both, in any Area or specified portion of an Area is projected by the Regional Director [for the area described in paragraph (a)(3) of this section, the Southwest Regional Director of the National Marine Fisheries Service shall make the projections] to be reached prior to the end of a season scheduled in this Part 661, the Secretary shall, by publication of a field order in the FEDERAL REGISTER, close the commercial or recreational fishery, or both, as of the date the harvest guideline will be reached in that Area or specified portion of an Area.

(5) If it appears that either the commercial or recreational fishery will not catch all of its quota of chinook salmon in either the area north of Point Arena or the area south of Point Arena in the California Area by the end of the scheduled season, the surplus that will not be harvested shall be re-allocated to the other fishery in that portion of the California Area by field order of the Secretary upon recommendation of the Southwest Regional Director.

(6) Availability of Data: The Regional Director shall compile in aggregate form all data and information relevant

to the projections and field orders specified in paragraph (a) of this section and shall make them available for public review during normal office hours at the Northwest Regional Office, 1700 Westlake Avenue North, Seattle, Washington 98109, or subsequent address of that office. Data and information pertaining to the California Area shall also be available for public review at the Southwest Regional Office of the National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

(7) Public Comment: Interested persons may submit comments, relevant to the actions taken as described in paragraph (a) of this section, to the Regional Director from the date of filing any required notices with the FEDERAL REGISTER through the 15th day following any closure of fishing.

(b) *Modifications of regulations based on in-season developments.* (1) In addition to automatic fishing season closures based on harvest guidelines, the Secretary may also modify the open seasons and catch limits in § 661.10 and § 661.11 in Sub-Areas A and B by issuing a field order in accordance with the provisions of this section, if the Secretary determines that:

(i) Actual conditions of abundance and distribution of coho salmon, and of fishing effort and catches, differ from conditions anticipated prior to the opening of the fishing season; or

(ii) In-season modifications are reasonably necessary to provide adequate escapement of coho salmon from the ocean fisheries for spawning, to meet treaty Indian allocation requirements, or to maintain the historical harvest ratio between commercial and recreational salmon fisheries as set forth in paragraph (b)(4) of this section.

(2) Procedures for *Preliminary* Determinations: Within 24 days following the opening of an All-Salmon Species season in Sub-Areas A or B, or the working day closest following, the Secretary shall, based on catch data, make a preliminary projection of total ocean harvests that will occur by the end of the commercial and recreational salmon fishing seasons in the WPP and OPI Areas. The preliminary projections and determinations shall be published in the FEDERAL REGISTER and disseminated to public news media as soon as practicable after they are made.

(3) Procedures for *Final* Determinations and Field Orders: Within 40 days following the opening of an All-Salmon Species season in Sub-Areas A or B (hereinafter referred to as Day-40), or the working day closest following, the Secretary following consultation with the Chairman of the Council, the Director of WDF, and the Director of ODF&W, and taking into consideration all information received as provided for in this paragraph, shall estimate coho stock abundances in the WPP and OPI Areas and make a final projection of fishing effort and total ocean harvests that will occur by the end of the scheduled fishing season by the commercial and recreational fisheries. The final determinations by the Secretary and any field order issued under paragraph (b) of this section shall be published in the FEDERAL REGISTER and disseminated to public news media as soon as practicable after they are made, together with the reasons therefore. The following factors shall be considered in the final projection of coho abundance, ocean fishing effort and coho harvests in the WPP and OPI Areas:

(i) The amount, distribution, and trends of fishing effort and coho salmon catches of the commercial and recreational fisheries in the WPP and OPI Areas as of Day-40, compared to similar data and time periods in prior years; and

(ii) The current and historical coho salmon harvest ratios between the commercial fishery and the recreational fishery, as set forth in paragraph (b)(4) of this section; and

(iii) Updated estimates of coho salmon abundance and distribution in the WPP and OPI Areas compared to the pre-season WPP and OPI predictions; and

(iv) Any available data from marked-fish recoveries, including analyses of recoveries of coho salmon with implanted coded-wire tags; and

(v) Any other available scientific information relevant to the abundance and distribution of coho salmon stocks, total fishing effort and catches of coho salmon in the WPP or the OPI Areas.

(4) Any modifications of fishing regulations made by the Secretary under paragraph (b) of this section, shall, insofar as possible, maintain the historical coho salmon harvest ratios between the commercial and recreational fisheries as follows:

(i) For the WPP Area, a 60:40 coho harvest ratio between the commercial and recreational fisheries, respectively.

(ii) For the OPI Area south of Cape Falcon, a 71:29 coho harvest ratio between the commercial and recreational fisheries, respectively.

(5) Availability of Data: The Regional Director shall compile in aggregate form all data relevant to the preliminary projections and final determinations under paragraph (b) of this section, and shall make them available for public review during normal office hours at the Northwest Regional Office of the National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Washington 98109, or subsequent address of that office.

(6) Public Comments: Interested persons may submit comments that are relevant to the projections and determinations in paragraphs (b)(2) and (b)(3) of this section to the Regional Director, for at least 10 days following filing with the FEDERAL REGISTER.

(c) *Effectives dates.* (1) Any field order issued under paragraphs (a) or (b) of this section shall be disseminated to public news media and shall be effective on the date specified in the field order or on the date the field order is filed with the FEDERAL REGISTER, whichever is later.

(2) Any field order issued under paragraphs (a) or (b) of this section shall remain in effect until the expiration date stated in the order, or until rescinded or superceded; *Provided, That* no such field order shall have any effect beyond the end of the calendar year in which issued, at which time provisions of this Part 661 that were superseded by such field order shall again become effective until subsequently modified or superseded.

(d) Nothing contained in this section shall limit the authority of the Secretary to issue emergency regulations under section 305(e) of the Act as specified in § 661.14.

[46 FR 45960, Sept. 16, 1981]

§ 661.13 Treaty Indian fishing.

(a) Persons authorized by the Makah Tribe to exercise rights under the Treaty with the Makah may fish for all salmon species in that portion of Sub-Area A north of 48°07′36″ North latitude (Sand Point) and such other areas as may hereafter be authorized for that tribe's treaty fishery by a Federal court, from 0001 hours on May 1, to 2400 hours on October 31. Minimum size limits shall be 24-inches for chinook salmon and 16-inches for coho salmon. Except as specified by this paragraph (a), such persons are subject to the provisions of this Part 661, the Act, and any other regulation issued under the Act.

(b) Persons authorized by the Quileute and Hoh Tribes to exercise rights under the Treaty of Olympia, may fish for all salmon species in that portion of Sub-Area A south of 48°07′36″ North latitude (Sand Point) and north of 47°31′42″ North latitude (mouth of Queets River), and such other areas as may hereafter be authorized for those tribes' fisheries by a Federal court, from 0001 hours on May 1, to 2400 hours on October 31. Except as specified in this paragraph (b), such persons are subject to the provisions of this Part 661, the Act, and any other regulations issued under the Act.

(c) Persons authorized by the Quinault Tribe to exercise rights under the Treaty of Olympia, may fish for all salmon species in that portion of Sub-Area A south of 47°40′06″ North latitude (Destruction Island) and north of 46°53′03″ North latitude (Point Chehalis), and such other areas as may hereafter be authorized for that tribe's treaty fishery by a Federal court, from 0001 hours on May 1, to 2400 hours on October 31. Except as specified by this paragraph (c), such persons are subject to the provisions of this Part 661, the Act, and any other regulations issued under the Act.

(d) The Secretary will give due consideration in promulgating emergency regulations under § 661.14 to the treaty fishing rights of Indian tribes with federally adjudicated usual and accustomed fishing grounds in the area affected by such regulations.

[46 FR 30638, June 10, 1981; 46 FR 37706, July 22, 1981]

§ 661.14 Emergency regulations.

The Secretary may issue emergency regulations under section 305(e) of the Act, if the Secretary determines that an emergency involving the salmon resource exists. Such emergency regulations will become effective upon filing with the FEDERAL REGISTER. Information on emergency regulations will be disseminated to affected persons through public news media.

§ 661.15 Catch reports.

This Part 661 recognizes that catch and effort data necessary for implementation of this Fishery Management Plan shall be collected by the States of Washington, Oregon and California under existing State data-collection provisions. No additional catch reports will be required of fishermen or processors as long as the data-collection and reporting systems operated by State agencies continue to provide the Secretary with statistical information adequate for management.

§ 661.16 Experimental fisheries.

(a) The Pacific Council may recommend to the Director of the Northwest Region of the National Marine Fisheries Service that experimental fisheries for research purposes be allowed in the Fishery Management Area, as may be proposed by the Council, the Federal Government, State Governments, and Treaty Indian Tribes having usual and accustomed fishing grounds in the Fishery Management Area.

(b) The Regional Director shall not allow any experimental fishery recommended by the Council unless he determines that the purpose, design, and administration of the experimental fishery are consistent with the goals and objectives of the Council's fishery management plan, the national standards (as set forth in § 301(a) of the Act), and other applicable law.

(c) Each vessel participating in any experimental fishery recommended by the Council and allowed by the Regional Director shall be subject to all provisions of this Part 661, except those portions necessarily relating to the purpose and nature of the experimental fishery. These exceptions shall be specified in a letter issued by the Regional Director to each vessel participating in the experimental fishery and that letter shall be carried aboard each participating vessel.

§ 661.17 Scientific research.

Nothing in this Part 661 is intended to inhibit or prevent any scientific or oceanographic research which is conducted in the Fishery Management Area by a scientific research vessel. The Regional Director shall acknowledge any notification he might receive of any scientific or oceanographic research with respect to salmon being conducted by a scientific research vessel, by issuing to the operator or master of that vessel a letter of acknowledgement, containing information on the purpose and scope (locations and schedules) of the activities. The Regional Director shall transmit copies of such letter to the Council, and to State and Federal administrative and enforcement agencies, to ensure that all concerned parties are aware of the research activities.

PART 662—NORTHERN ANCHOVY FISHERY

Sec.

662.1 Purpose and scope.
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662.4 Fishery management areas.
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662.6 Nonreduction fishing.
662.7 Catch reports.
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662.10 Emergency regulations.

AUTHORITY: 16 U.S.C. 1801-1882.

SOURCE: 43 FR 40868, Sept. 13, 1978, unless otherwise noted.

§ 662.1 Purpose and scope.

This Part 662 governs fishing for northern anchovy by vessels of the United States in the fishery conservation zone seaward of California south of 38° N. latitude over which the United States exercise exclusive fishery management authority (Pacific Anchovy Fishery Area (PAFA)). These regulations recognize that any State law which pertains to vessels registered under the laws of that State, while such vessels are in the fishery conservation zone, and which is consistent with the Federal Regulations shall continue to have force and effect upon fishing activities addressed herein.

§ 662.2 Definitions.

For the purpose of this part, the following terms mean:

(a) *Act.* The Fishery Conservation and Management Act of 1976, Pub. L. 94-265 (16 U.S.C. 1801 et seq.) as amended.

(b) *Authorized officer.* (1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any certified enforcement agent or special agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Secretary of Transporation to enforce the provisions of the act; and

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (b)(1) of this section.

(c) *Fishing.* (1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish.

(d) *Fishing vessel.* Any boat, ship, or other water craft which is used for, equipped to be used for, or of a type which is normally used for fishing, except for seine skiffs which are an integral part of a fishing operation conducted under this part.

(e) *Fishing year.* A 12-month period beginning August 1 and extending through July 31 of the following year.

(f) *Northern anchovy.* Fish of the species *Engraulis mordax*, or parts or products thereof.

(g) *Reduction fishing.* The fishing for northern anchovies for conversion of fish into fish flour, fish meal, fish scrap, fertilizer, fish oil, or other fishery products or byproducts for other than human consumption.

(h) *Nonreduction fishery.* Fishing for northern anchovies for the purposes of providing live or frozen bait or providing fish for human consumption.

(i) *Load.* The total amount of fish by weight from a single vessel per fishing trip.

(j) *Lot.* An amount of fish by weight which is the subject of a separate sale or delivery.

(k) *Reduction harvest quota.* The amount of anchovies, by weight, which may be harvested annually for reduction purposes.

(l) *Regional Director.* The National Marine Fisheries Service Regional Director, Southwest Region, 300 South Ferry Street, Terminal Island, Calif. 90731, or a designee.

(m) *Secretary.* The Secretary of Commerce or a designee.

(n) *Subarea B harvest quota.* The amount of anchovies, by weight, which may be harvested annually for reduction purposes in subarea B.

(o) *Total harvest quota.* The total amount of anchovies, by weight, which may be harvested annually by the reduction and nonreduction fisheries.

§ 662.3 Quota.

The total harvest quota, reduction harvest quota and subarea B harvest quota shall be determined by the following formulas and announced by notice in the FEDERAL REGISTER on or about August 1 of each year.

(a) When spawning biomass is less than 100,000 short tons, there shall be no fishing for anchovies for any purpose.

(b) When spawning biomass is equal to or greater than 100,000 short tons but less than 1 million short tons, the total harvest quota for the PAFA shall not exceed 12,600 short tons which will be reserved for nonreduction purposes.

(c) When spawning biomass is equal to or greater than 1 million short tons, the total harvest quota in the PAFA shall not exceed 70 percent of one-third of the spawning biomass in excess of 1 million short tons, or 12,600 short tons, whichever is greater; of this amount, the first 12,600 short tons will be reserved for nonreduction fishing and the remainder will constitute the reduction harvest quota.

(d) Ten percent of the reduction harvest quota or 10,000 tons, whichever is less, shall be reserved for reduction fishing in subarea A. The remainder will constitute the subarea B harvest quota.

(e) Anchovies harvested after August 1, 1978, will be counted toward the 1978–79 harvest quotas.

§ 662.4 Fishery management areas.

(a) The PAFA is divided into two subareas which have the following northern and southern limits;

(1) Subarea A: Between a northern limit at 38° N. latitude (Point Reyes) and a southern limit at 35°14′ N. latitude (Point Buchon).

(2) Subarea B: Between a northern limit at 35°14′ N. latitude (Point Buchon) and a southern limit which is the United States-Mexico International Boundary described at 42 FR 12938.

(b) The inner boundary of both subareas is a line coterminous with the seaward boundary of the State of California, and the outer boundary of each subarea is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

§ 662.5 Reduction fishing.

(a) *Open seasons.* All open seasons will begin at 0001 hours and terminate at 2400 hours local time. The PAFA is closed to reduction fishing except as follows:

(1) In subarea A: The open season is from August 1 to January 31; and from April 1 to June 30.

(2) In subarea B: The open season is from September 15 to January 31; and from April 1 to June 30.

(b) *Closed areas.* The following areas are closed to reduction fishing:

(1) *Farallon Islands closure.* The portion of subarea A bounded by:

(i) A straight line joining Pigeon Point Light (37°10.9′ N., 122°23.6′ W.) and the U.S. navigation light on Southeast Farallon Island (37°42.0′ N., 123°00.1′ W.); and

(ii) A straight line joining the U.S. navigation light on Southeast Farallon Island (37°42.0′ N., 123°00.1′ W.) and the U.S. navigation light on Point Reyes (37°59.7′ N., 123°01.3′ W.).

(2) *Subarea B areas.* That portion of subarea B described as:

(i) *Oxnard closure.* The area that extends offshore 4 miles from the mainland shore between lines running 250° true from the steam plant stack at Manadalay Beach (34°12.4′ N., 119°15.0′ W.) and 220° true from the steam plant stack at Ormond Beach (34°07.8′ N., 119°10.0′ W.).

(ii) *Santa Monica Bay closure.* Santa Monica Bay shoreward of that line from Malibu Point (34°01.8′ N., 188°40.8′ W.) to Rocky Point (Palos Verdes Point) (33°46.5′ N., 118°25.7′ W.).

(iii) *Los Angeles Harbor closure.* The area outside Los Angeles Harbor described by a line extending 6 miles 180° true from Point Fermin (33°42.3′ N., 118°17.6′ W.) and then to a point located 3 miles offshore on a line 225° true from Huntington Beach Pier (33°39.2′ N., 118°00.3′ W.).

(iv) *Oceanside to San Diego closure.* The area 6 miles from the mainland shore south of a line running 225° true from the tip of the outer breakwater (33°12.4′ N., 117°24.1′ W.) of Oceanside Harbor to the United States-Mexico International Boundary.

(3) The inner boundary line of each closed area shall be the line described in § 662.4b.

(c) *Length restrictions.* No person shall land anchovies less than five (5) inches in length, measured from tip of snout to tip of tail, for reduction purposes, except that 15 percent by weight of all anchovies in any such load or lot may be less than minimum length.

(d) If a vessel has filed with the State of California a declaration of intent to take anchovies for reduction purposes, it shall be conclusively presumed that any fishing for anchovies by that vessel is for reduction purposes unless an exemption to the declaration has been filed with the State of California.

(e) *Closure of the reduction fishery.* (1) When the reduction harvest quota, the subarea B harvest quota, or the total harvest quota is about to be reached, the Secretary will announce in the FEDERAL REGISTER, and through the offices of the Southwest Region, National Marine Fisheries Service, the Council, and the California Department of Fish and Game, a closure of the reduction fishery in one or both subareas.

(2) If a closure is announced during any open season as specified in § 662.5(a), reduction fishing subject to the closure shall cease by seven (7) days from the date of the FEDERAL REGISTER notice, and shall not resume until new harvest quotas are announced under § 662.3.

(3) All anchovies harvested for reduction purposes in the PAFA and adjacent territorial sea shall be counted toward the applicable harvest quotas.

(f) *Registration.* All vessels fishing anchovies for reduction shall be required to display their State anchovy reduction registration number in 14 inch numerals on the side and top of the wheel house.

§ 662.6 Nonreduction fishing.

(a) There are no closed areas or closed seasons for nonreduction fishing in the PAFA.

(b) No person shall land anchovies less than five (5) inches in length, measured from tip of snout to tip of tail, for any nonreduction purpose other than bait, except that 15 percent, by weight, of all anchovies in any such load or lot may be less than minimum length.

(c) Nonreduction fishing in the PAFA shall cease seven (7) days from the date that a total harvest quota closure is announced as specified in § 662.5(e). Nonreduction fishing shall not resume until a new total harvest quota is announced under § 662.3.

(d) All anchovies harvested for nonreduction purposes in the PAFA and adjacent territorial sea shall be counted toward the total harvest quota.

§ 662.7 Catch report.

Data regarding fishing vessels, fishing activities, landings, and processing activities required by the fishery management plan for the reduction and nonreduction fisheries are collected by the State of California under existing State data collection provisions. No additional reports will be required of fishermen or processors as long as the data collection and reporting systems operated by the State of California continue to provide the Secretary with statistical information adequate for management. Reporting requirements may be promulgated by emergency regulations if this reporting system becomes inadequate for management purposes.

§ 662.8 General restrictions.

The following restrictions apply to all anchovy fishing in subareas A and B:

(a) No person shall fish for anchovies: (1) During any applicable closed season or in any applicable closed area specified in this part; or

(2) During any applicable closure specified in this part; or

(3) Aboard a vessel which has not filed an applicable declaration of intent with the State of California as specified in this part.

(b) No person shall land any anchovy of less than minimum length, except as specified in this part.

(c) No person shall possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land, any anchovy which was taken in violation of the Act, this part, or any other regulation issued under the Act.

(d) No person shall: (1) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of enforcement of this act, this part, or any other regulation issued under the Act.

(2) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in enforcing provisions of this part;

(3) Resist a lawful arrest for any act prohibited by this part; or

(4) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such person has committed any act prohibited by this part.

(e) The operator of each fishing vessel shall immediately comply with instructions issued by authorized officers to facilitate safe boarding and inspection of the vessel for purposes of enforcing the Act and this part.

§ 662.9 Penalties.

Any person found to be in violation of the part, the Act, or any other regulation issued under the Act will be subject to the civil and criminal penalty provisions and forefeiture provisions of the Act.

§ 662.10 Emergency regulations.

The Secretary may issue emergency regulations under section 305(e) of the Act, if an emergency involving the anchovy resource is found, by publication of a notice in the FEDERAL REGISTER.

PART 671—TANNER CRAB OFF ALASKA

Subpart A—General

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AUTHORITY: 16 U.S.C. 1801 et seq.

SOURCE: 45 FR 72669, Nov. 3, 1980, unless otherwise noted.

Subpart A—General

§ 671.1 Purpose and scope.

(a) This part regulates fishing for Tanner crab by vessels of the United States within that portion of the Bering Sea and Gulf of Alaska over which the United States exercises exclusive fishery management authority. These regulations implement the Tanner crab fishery management plan developed by the North Pacific Fishery Management Council.

(b) For regulations governing fishing for Tanner crab in the Gulf of Alaska and Bering Sea by fishing vessels other than vessels of the United States, see 50 CFR 611.91.

§ 671.2 Definitions.

In addition to the definitions in the Act, and unless the context requires otherwise, the terms used in this part shall have the following meanings (some definitions in the Act have been repeated here to aid understanding of the regulations):

Act means the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 *et seq.*, as amended.

ADF&G means the Alaska Department of Fish and Game.

Assistant Administrator means the Assistant Administrator for Fisheries, National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, or an individual to whom appropriate authority has been delegated.

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the United States Coast Guard;

(b) Any certified enforcement agent or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce or the Commandant of the Coast Guard to enforce the provisions of the Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research, which involves:

(a) the catching, taking or harvesting of fish;

(b) the attempted catching, taking or harvesting of fish;

(c) any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or

(d) any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

Fishing Vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for (a) fishing or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Landing means off-loading fish (including Tanner crab).

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) any person who owns that vessel in whole or in part;

(b) any charterer of the vessel, whether bareboat, time or voyage;

(c) any person who acts in the capacity of a charter, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) any agent designated as such by any person in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means the Director, Alaska Region, National Marine Fisheries Service, Box 1668, Juneau, Alaska, 99802 or an individual to whom appropriate authority has been delegated.

Registration Area A (Southeastern Alaska-Yakutat) is that portion of the FCZ in the Gulf of Alaska east of 143° 53′36″ W. longitude (Cape Suckling).

Registration Area E (Prince William Sound) is that portion of the FCZ between 143°53′36″ W. longitude (Cape Suckling) and 148°53′ W. longitude (Cape Fairfield).

Registration Area H (Cook Inlet) is that portion of the FCZ lying west of 143°53′ W. longitude (Cape Fairfield) and north of 58°52′ N. latitude (Cape Douglas).

Registration Area J (Westward) includes the FCZ in the Bering Sea, and that part of the FCZ in the Gulf of Alaska between 148°53′ W. longitude (Cape Fairfield) and 172° E. longitude south of 58°52′ N. latitude (Cape Douglas).

Ring Net means a bag-shaped net suspended from a circular or retangular frame.

Tanner Crab means all species of the genus *Chionoecetes* including *C. bairdi* and *C. opilio.*

Tanner Crab Pot means a portable structure designed and constructed to capture and retain fish and shellfish alive in the water. The Tanner crab pot has rigid tunnel eye openings which individually are a maximum of five (5) inches (13 cm) in one dimension, and tunnel eye opening perimeters which individually are larger than thirty (30) inches (76 cm); or the pot tapers inward from its base to a top consisting of one horizontal opening of undescribed size.

Vessel of the United States means:

(a) a vessel documented or numbered by the Coast Guard under United States law; or

(b) a vessel, under five net tons, which is registered under the laws of any State.

§ 671.3 Relation to other laws.

(a) *Delegation.* The Assistant Administrator has delegated to the Regional Director authority to make in-season adjustments pursuant to section 671.27 of this part.

(b) *Other Agreements.* Certain responsibilities relating to the administration of this part will be performed by personnel of the State of Alaska under the terms of an agreement with NOAA/NMFS and the United States Coast Guard.

§ 671.4 Reporting requirements.

(a) The operator of any fishing vessel subject to this part whose port of landing is in the United States is responsible for the submission of an accurately completed State of Alaska fish ticket for each sale or delivery of any Tanner crab covered by this part.

(b) At the election of the vessel operator, the fish ticket shall be either: (1) submitted by the vessel operator directly to the ADF&G within one week after such Tanner crab are sold or delivered; or (2) prepared, at the request of the operator, by the purchaser (i.e., any person who receives Tanner crab for a commercial purpose from a fishing vessel subject to this part) and submitted by the purchaser to the ADF&G within one week after such Tanner crab are received by the purchaser.

(c) In addition to the requirements of paragraphs (a) and (b) of this section, each operator (or purchaser, if the fish ticket is submitted in accordance with paragraph (b)(2)) shall also accurately state on each such fish ticket: (1) total time fished; (2) total number of pot lifts; and (3) quantity and type of gear used.

(d) The operator of any fishing vessel subject to this part whose port of landing is outside the State of Alaska shall submit a completed State of Alaska fish ticket, or an equivalent document containing all of the information required on an Alaska fish ticket and in § 671.4(c), to the ADF&G within one week after the date of each sale or delivery of any Tanner crab. [Sample alternative document reserved.]

(e) Any U.S. processor who receives Tanner crab by way of purchase, barter, trade, or sale from a U.S. fishing vessel or prior purchaser subject to this part shall provide, when requested to do so by the Regional Director, but in no event more than twice a year, the following information by Tanner crab species:

(1) Actual plant capacity to process Tanner crab in the next fishing year, in terms of weight, and

(2) The estimated actual amount by weight of Tanner crab to be processed in the coming fishing year.

§ 671.5 General prohibitions.

It is unlawful for any person to:

(a) Fish for, take, or retain Tanner crab in violation of the Act, this part, or any regulation or permit issued under the Act, including but not limited to the following: during closed seasons or in closed areas specified in Subpart B; after closure of an area when a catch limitation is reached, or as otherwise announced by a field order issued under this part; or by means of gear or methods prohibited by this part, *except that C. bairdi* Tanner crab taken incidentally to permitted fishing for *C. opilio* Tanner crab in the area north of 58° N. latitude and west of 164° W. longitude may be retained;

(b) Take and retain Tanner crab in violation of § 671.22 of this part;

(c) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any Tanner crab taken in violation of the Act, this part, or any other regulation or permit issued under the Act;

(d) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Act, this part, or any other regulation or permit issued under the Act;

(e) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any Authorized Officer in the conduct of any search or inspection described in paragraph (d) of this section;

(f) Resist a lawful arrest for any act prohibited by this part; or

(g) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part.

§ 671.6 Enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to this part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the fishing vessel, its gear, equipment, and catch for purposes of enforcing the Act and this part.

(b) *Signals.* Upon being approached by a Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Act, the operator of a fishing vessel shall be alert for signals conveying enforcement instructions. The following signals extracted from the International Code of Signals are among those which may be used:

(1) "L" meaning "You should stop your vessel instantly,"

(2) "SQ3" meaning "You should stop or heave to; I am going to board you," and

(3) "AA AA AA etc." which is the call to an unknown station.

(c) *Boarding.* A fishing vessel signalled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the Authorized Officer and his party to come aboard;

(2) If requested, provide a safe ladder for the Authorized Officer and party;

(3) When necessary to facilitate the boarding, provide a man rope, safety line, and illumination for the ladder; and

(4) Take such other actions as necessary to ensure the safety of the Authorized Officer and party and to facilitate the boarding.

§ 671.7 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, and 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 671.21 Optimum yield.

(a) *Table.* The optimum yield for Tanner crab for each Federal registration area is set forth in Table I. These specifications of optimum yield are effective for the fishing year beginning on November 1, and ending on October 31.

Table I

Registration area	Optimum yield (in metric tons) [1]	Species
Registration Area A (Southeast-Yakutat).	2,495	All.
Registration Area E (Prince William Sound).	3,175	All.
Registration Area H (Cook Inlet).	2,404	All.
Registration Area J:		
Kodiak district	15,865	All.
South Peninsula district	13,608	All.
Aleutian district	907	All.
	10,000–15,000	*C. bairdi.*
Bering Sea district	58,984	*C. opilio.*

[1] Catches of Tanner crab in State of Alaska registration area will be considered part of the optimum yield specified for the contiguous Federal registration area.

(b) *Limitation.* Except that *C. bairdi* Tanner crab taken incidentally to permitted fishing for *C. opilio* Tanner crab in the area north of 58° N. latitude and west of 164° W. longitude may also be retained.

(c) *Field Orders.* Except as provided in § 671.21(b), if the Regional Director determines that the optimum yield for a particular species of Tanner crab in any geographic area specified in Table I will be reached, he shall issue a field order pursuant to § 671.27(a) prohibiting fishing for that particular species of Tanner crab by vessels of the United States in the applicable geographic area from the effective date of the field order.

§ 671.22 Size and sex restrictions.

(a) *Female Tanner crabs.* No female Tanner crab may be retained.

(b) *Male Tanner crabs.* No male Tanner crab of the species *C. bairdi* measuring less than 5½ inches (140 mm) across the greatest width of the carapace may be retained, except that male Tanner crabs of the species *C. bairdi* in Federal registration area E (Prince William Sound) may be retained if they measure 5.3 inches (135 mm) or greater, across the greatest width of the carapace. The width measurement of Tanner crab is determined by measuring the greatest straight line distance across the carapace, including the spines, perpendicular to an imaginary line drawn between a point midway between the eyes and the midpoint of the posterior portion of the carapace.

(c) *General.* All female and undersized male Tanner crabs of the species *C. bairdi* must be returned to the sea immediately with a minimum of injury, regardless of their condition.

§ 671.23 Vessel registration.

(a) *Requirement.* Any vessel of the United States fishing for Tanner crab in any Federal registration area must be registered for fishing in such area pursuant to this section.

(b) *Applications:*

(1) The owner (or the owner's authorized agent) of a fishing vessel desiring to fish for Tanner crab in a Federal registration area, not registered for a State of Alaska registration area contiguous with such Federal registration area, must submit to the Regional Director, within 30 days prior to the scheduled opening of fishing in the Federal registration area, a completed State of Alaska registration form to be used as a Federal form.

(2) A fishing vessel registered for a State of Alaska registration area will be deemed to be registered for the contiguous Federal registration area.

(c) *Registration Certificate.* The registration certificate shall be signed by the owner (or the owner's authorized agent), shall be kept onboard by the operator at all times during fishing operations, and shall be shown by the operator upon request to any Authorized Officer.

(d) *Registration Validation.* A registration certificate is not valid until the fishing vessel has complied with the inspection requirements contained in § 671.24 of this part. A valid registration certificate becomes invalid:

(1) Upon landing Tanner crab in a Federal registration area other than the area for which the vessel is registered (or other than the contiguous State of Alaska registration area); or

(2) Seventy-two (72) hours after the close of the season for the applicable Federal registration area, whichever occurs first.

(e) *Late Registration.* The late registration of any fishing vessel may be permitted by the Regional Director in the case of the loss of a registered fishing vessel. For purposes of this paragraph, "loss of a registered fishing vessel" means that the fishing vessel is incapable of being used to take Tanner crab during the open Tanner crab season in the area for which it is registered. An application for late registration under this paragraph shall be documented by submission of adequate proof, in writing, concerning the loss of the vessel. The late registration shall be for the Federal registration area in which the lost fishing vessel was registered.

(f) *Expiration.* A registration certificate expires on the last day of the registration year. Registration for any subsequent year shall be obtained by re-application in accordance with the procedure set forth in this section.

(g) *Registration Year.* The registration year shall be August 1 through July 31.

(h) *Exclusive Registration Areas.* (1) Federal registration areas E and H are exclusive registration areas. No fishing vessel registered for an exclusive Federal registration area may be registered for any other Federal registration area (exclusive or non-exclusive) during a registration year.

(2) A fishing vessel registered for an exclusive State of Alaska registration area may register only in the contiguous Federal exclusive registration area during that registration year.

(3) No operator of a fishing vessel registered for an exclusive Federal registration area may operate any other fishing vessel registered for any other exclusive Federal registration area.

(i) *Non-Exclusive Registration Areas.* Federal registration areas A and J are non-exclusive registration areas. A fishing vessel may be registered for any or all of the non-exclusive Federal registration areas during any registration year.

§ 671.24 Vessel inspection.

(a) *Inspection.* (1) Within 72 hours prior to fishing for Tanner crab for the first time during an open season, each registered fishing vessel must have its holds and live tanks, if any, inspected by an Authorized Officer at an inspection point specified in paragraph (b) of this section.

(2) *Requirement.* A registration certificate will not be validated if there are Tanner crab on board the fishing vessel at the time of inspection.

(3) *Certificate.* No fishing vessel will be issued an inspection certificate unless a current registration certificate for the contiguous Federal registration area is displayed to the Authorized Officer conducting the inspection. The inspection certificate shall be signed by the current fishing vessel operator, shall be kept on board by the operator at all times during fishing operations, and shall be shown by the operator upon request to any Authorized Officer.

(4) *Landings.* The operator of a fishing vessel landing Tanner crab in a Federal registration area other than the area for which the fishing vessel is registered (or other than in the contiguous State of Alaska registration area) must attach the inspection certificate to the back of the ADF&G copy (yellow copy) of the State of Alaska fish ticket at the time the Tanner crab are landed.

(b) *Inspection Points.* Inspection points are those established by the ADF&G for State of Alaska purposes and by these regulations for Federal purposes. Additional inspection points may be authorized by the Regional Director if the Regional Director finds that:

(1) Existing inspection points are imposing an unusual and material hardship which affected fishermen cannot themselves mitigate; or

(2) The ADF&G has no practical means of making special administrative accommodations regarding existing inspection points; and

(3) Authorization of additional inspection points would not result in a significant likelihood of unauthorized fishing or other management or enforcement problems.

§ 671.25 Landing requirements.

(a) Except as provided in paragraph (b) of this section, all Tanner crab must be landed in the State of Alaska registration area contiguous to a Federal registration area for which the fishing vessel is registered.

(b) The operator of a fishing vessel who desires to land Tanner crab outside the State of Alaska, or in a State registration area other than the State registration area contiguous to a Federal registration area for which the fishing vessel is registered, shall contact, by radio or other means, an Authorized Officer prior to leaving the Federal registration area for which the fishing vessel is registered, and shall state to the Authorized Officer the amount of Tanner crab on board at the time. A fishing vessel operator acting pursuant to this paragraph shall submit the vessel to inspection at such location as the Authorized Officer may require. The operator shall not land an amount of Tanner crab which is more than one hundred and ten (110) percent or less than ninety (90) percent of the amount stated to be present onboard upon leaving the Federal registration area, or observed to be present onboard at the time of any inspection.

(c) *Certificate Validity.* If a fishing vessel lands Tanner crab pursuant to paragraph (b) of this section, the registration certificate of the fishing vessel becomes invalid. To again become validly registered for a Federal registration area, the fishing vessel must be reinspected pursuant to the procedures of § 671.24 of this part.

§ 671.26 Season and gear restrictions.

(a) *Season Dates.* All season dates in this section are inclusive. Time periods begin at 12:01 a.m. and end at 11:59 p.m. on the dates specified, based on local zone time, unless otherwise specified.

(b) *General Requirements.* (1) At least one buoy on each Tanner crab pot or ring net shall be legibly marked with the permanent ADF&G vessel license number of the fishing vessel using the gear or, if a fishing vessel does not have a permanent ADF&G vessel license number, with the official documentation number of the fishing vessel operating the gear. Identification numbers shall be painted on the top one-third of the buoy in numerals at least 4 inches in height and ½ inch in width in contrasting color to that of the buoy. The buoy markings shall be legible and visible on the buoy above the water surface when attached to the Tanner crab pot, and maintained in a legible condition.

(2) All Tanner crab pots shall contain an opening in the webbing of a side wall of the pot which has been laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread, which upon deterioration or parting of the twine produces an opening in the web with a perimeter equal to or exceeding one half of the tunnel eye opening perimeter.

(3) During any period when fishing for all species of Tanner crab is prohibited in any Federal registration area, Tanner crab pots shall either be removed from the water or stored in less than 25 fathoms (46m) of water, with all doors secured fully open and all bait and bait containers removed, with the following exceptions:

(i) In the Kamishak Bay and Southern districts of the Cook Inlet area, the maximum pot storage depth is 15 fathoms (27m);

(ii) Tanner crab pots with all doors secured fully open and with all bait and bait containers removed may be stored in water depth greater than the maximum permissible storage depth for 72 hours prior to the opening of the Tanner crab season, and for 72 hours after the season closure where the pots are fished;

(iii) Tanner crab pots may be stored in waters deeper than 25 fathoms (46m) if specifically allowed by this section.

(c) *Registration Area A:* Tanner crab may be taken in Registration Area A from September 1 through May 1 only, except that west of the longitude of Cape Spencer (at 136°40′ W. longitude), Tanner crab may be taken from September 1 through 6:00 p.m. (YST) April 20.

(d) *Registration Area E.* (1) *Districts.* The following districts within Federal Registration Area E are established:

(i) *Western District:* All waters east of the longitude of Cape Fairfield (148°53′ W. longitude) south of a line from the southern entrance of Port Nellie Juan at 60°36′ N. latitude to Point Eleanor (60°34′42″ N. latitude, 147°34′6″ W. longitude) to the eastern tip of Smith Island (60°31′54″ N. latitude, 147°19′ W. longitude) to Montague Point (60°22′18″ N. latitude, 147°06′0″ W. longitude), west of a line from Zaikof Point (60°18′12″ N. latitude, 146°55′42″ W. longitude) to Seal Rocks (60°10′ N. latitude, 146°50′ W. longitude) and west of the longitude of Seal Rocks.

(ii) *Eastern District:* All waters east of the longitude of Seal Rocks (60°10′ N. latitude, 146°50′ W. longitude), east of a line from Seal Rocks, to Cape Hinchinbrook (60°15′54″ N. latitude, 146°37′18″ W. longitude), south of a line from Point Bentinck (60°23′24″ N. latitude, 146°05′36″ W. longitude) to Point Whitshed (60°26′36″ N. latitude, 145°53′12″ W. longitude), and west of the longitude of Cape Suckling (51°59′ N. latitude, 143°53′36″ W. longitude).

(iii) *Hinchinbrook District:* All waters east of a line from Montague Point to the eastern tip of Smith Island, south of a line from the eastern tip of Smith Island to Johnstone Point (60°28′48″ N. latitude, 146°37′18″ W. longitude), north and east of a line from Cape Hinchinbrook to Seal Rocks (60°10′ N. latitude, 146°50′ W. longitude), and east of a line from Seal Rocks to Zaikof Point.

(2) *Seasons.* Tanner crab may be taken in Registration Area E from November 15 through May 31 only, subject to adjustment by the Regional Director pursuant to § 671.27 of this part.

(3) *Gear.* (i) Only Tanner crab pots may be used to fish for Tanner crab. Tanner crab taken by any other means must be returned immediately to the sea, with a minimum of injury, regardless of their condition.

(ii) Two escape rings, 4¾ inches (121 mm) in minimum inside diameter, so located on the vertical plane to permit the escape of undersized crabs, shall be provided for each Tanner crab pot.

(e) *Registration Area H.* (1) *Districts.* The following districts within Registration area H are established:

(i) *Central District:* All waters between a line extending from Boulder Point at 60°46′23″ N. latitude, to Shell Platform C (60°45′50″ N. latitude, 151°30′08″ W. longitude), then to a point on the west shore at 60°46′23″ N. latitude, and the latitude of Anchor

Point Light (59°40'12" N. latitude, 151°52' W. longitude).

(ii) *Southern District:* All waters within a line from Anchor Point Light west to 59°46'15" N. latitude, 152°20' W. longitude, then south to 59°04'15 N. latitude, 152°20' W. longitude, then in a northeasterly direction to Cape Elizabeth (59°9'12" N. latitude; 151°53'18" W. longitude), then from Cape Elizabeth to Point Adam, (59°15'12" N. latitude; 151°58'48" W. longitude, including Kamishak Bay.

(iii) *Kamishak Bay District:* All waters within a line from 59°46'15" N. latitude, 153°00'30" W. longitude, then east to 59°46'15" N. latitude, 152°20' W. longitude, then south to 59°04'15" N. latitude, 152°20' W. longitude, then southwesterly to Cape Douglas (58°50'54" N. latitude, 153°16'24" W. longitude), including Kamishak Bay.

(iv) *Barren Islands District:* All waters within a line from Cape Douglas to Cape Elizabeth, then south to 58°52' N. latitude, 151°53' W. longitude, then west to Cape Douglas.

(v) *Outer District:* All waters within a line from Point Adam to Cape Elizabeth, then south to 58°52' N. latitude, 151°53' W. longitude, then east to the longitude of Aligo Point (149°44'33" W. longitude), then north to the mainland of Alaska.

(vi) *Eastern District:* All waters east of the longitude of Aligo Point (149°44'33" W. longitude), west of the longitude of Cape Fairfield (148°53' W. longitude), and north of 58°52' N. latitude.

(2) *Seasons.* (i) Tanner crab may be taken in the Southern district from December 1 through April 30 only, subject to adjustment by the Regional Director pursuant to § 671.27 of this part.

(ii) Tanner crab may be taken in the Central, Kamishak Bay, Barren Islands, and Outer and Eastern Districts from December 1 through May 31 only, subject to adjustment by the Regional Director pursuant to § 671.27 of this part.

(3) *Gear.* During any king crab season established by the State of Alaska an aggregate of not more than 75 king and Tanner crab pots (including Tanner crab pots used in State waters) may be fished in Registration Area H from any registered Tanner crab vessel.

(f) *Registration Area J.* (1) *Districts.* The following districts within registration area J are established:

(i) *Kodiak District:* South of 58°52' N. latitude, west of 150° longitude and east of the longitude of Cape Kumlik (157°27' W. longitude).

(ii) *South Peninsula District:* Between the longitude of Cape Kumlik and the longitude of Scotch Cap Light (164°44'6" W. longitude).

(iii) *Aleutian District:* Between the longitude of Scotch Cap Light (164°44'6" W. longitude) and 172° E. longitude, and south of 54°36" N. longitude.

(iv) *Bering Sea District:* Bering Sea waters north of 54°36' N. latitude. The following subdistricts within the Bering Sea District are established:

(A) *Southeastern Subdistrict:* East of 168° W. longitude, and south of the latitude of Cape Newenham (58°39' N. latitude), and all Bristol Bay waters.

(B) *Pribilof Subdistrict:* West of 168° W. longitude and south of the latitude of Cape Newenham (58°39' N. latitude).

(C) *Northern Subdistrict:* North of the latitude of Cape Newenham (58°39' N. latitude). The following sections within the Northern Subdistrict are established:

(*1*) *Nome Section:* All waters of Norton Sound between the longitude of Penny River and the longitude of Tophok Head.

(*2*) *General Section:* All other waters of the northern subdistrict.

(2) *Seasons.* Subject to adjustment by the Regional Director pursuant to § 671.27 of this part, tanner crab may be taken in Federal Registration Area J:

(i) In the Kodiak district from January 22 through April 30 only, except that in that portion of the Kodiak district between the longitude of Kilokak Rocks (156°20'13" W. longitude) and the longitude of Cape Kumlik (157°35' W. longitude) Tanner crab may be taken from January 22 through May 15 only.

(ii) In the South Peninsula district from December 1 to 12:00 noon, May 15 only, except that in that area east of a line from Kupreanof Point (55°34'

N. latitude, 159°37′ W. longitude) to the easternmost point of Castle Rock (54°16′48″ N. latitude, 159°29′ W. longitude), and east of a line extending southeast (135°T) from the easternmost point of Castle Rock (54°16′48″ N. latitude, 159°29′ W. longitude) and west of the longitude of Cape Kumlik (157°35′ W. longitude) Tanner crab may be taken from November 1 through 12:00 noon, May 15 only.

(iii) In the Aleutian district from January 15 to 12:00 noon, June 15 only; and

(iv) In the Bering Sea district from 12:00 noon January 15 to 12:00 noon June 15 only, except that Tanner crab other than *C. bairdi* may be taken or possessed from 12:00 noon January 15 to 12:00 noon September 3 only.

(3) *Storage of Gear.* During any period when fishing for all species of Tanner crab is prohibited in the applicable area, Tanner crab pots may be stored in the water only if stored:

(i) In the waters which are both west of 172°W. longitude and 30 fathoms (55 meters) or less in depth; or

(ii) In the Southeastern Subdistrict, in the waters which are bounded on the north by 58°N. latitude, on the south by 57°N. latitude, on the east by 164°W. longitude and on the west by 166°W. longitude.

[45 FR 72669, Nov 3, 1980, as amended at 45 FR 73078, Nov. 4, 1980]

§ 671.27 Time and area closures.

(a) *Field Orders.* (1) Field orders issued by the Regional Director under this part shall include the following information: (i) a description of the area to be opened or closed; (ii) the effective date and any termination date of such opening or closure; and (iii) the reason for the opening or closure.

(2) No field order issued under this section shall be effective until:

(i) It is filed for publication with the FEDERAL REGISTER;

(ii) It has been posted and otherwise made available to the public, in accordance with procedures customarily used by the ADF&G for posting and publicizing of similar notices of closure for 48 hours prior to its effective dates; and

(iii) It has been broadcast, at those time intervals, channels and frequencies customarily used by the ADF&G to broadcast similar notices of closure, for 48 hours prior to its effective date.

(3) Field orders issued pursuant to this section shall remain in effect until the earlier of the following dates: (i) any expiration date stated in the field order; or (ii) the effective date of any field order which modifies, rescinds, or supersedes the initial field order.

(b) *In-season Adjustments.* (1) *General.* The Regional Director may, following consultation with the ADF&G, adjust the opening and closing dates for the Federal registration areas, districts, subdistricts, and sections specified in § 671.26 of this part.

(2) *Determinations.* Any adjustment under this section shall be based on a determination by the Regional Director that (i) the condition of Tanner crab stocks in any such geographic area is substantially different from the condition anticipated at the beginning of the fishing year, and (ii) such differences reasonably support the need for in-season conservation measures to protect such Tanner crab stocks.

(3) *Data.* Fishery data reported inseason which relate to one or more of the following factors may be considered in making this determination:

(i) The effect of overall fishing effort within the area;

(ii) Catch per unit of effort and rate of harvest;

(iii) Relative abundance of Tanner crab within the area in comparison with pre-season prediction;

(iv) The proportion of immature or softshell Tanner crab being handled;

(v) General information on the condition of Tanner crab within the area; and

(vi) Any other factors relevant to the conservation and management of Tanner crab.

(4) *Procedures.* (i) The Regional Director shall publish proposed adjustments in the FEDERAL REGISTER for public comment before they are made final, unless the Regional Director finds for good cause that such advance notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

(ii) If the Regional Director decides, for good cause, that any in-season adjustment is to be made without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, the adjustment will be received by the Regional Director for a period of 15 days after the effective date of the adjustment.

(iii) During any such 15-day period, the Regional Director shall make available for public inspection, during business hours, the aggregate data upon which the adjustment was based. (Address: National Marine Fisheries Service, Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802).

(iv) If comments are received during the 15-day period, the Regional Director shall reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration, shall either: (A) publish in the FEDERAL REGISTER a notice of continued effectiveness of the adjustment, responding to comments received; or (B) modify or rescind the adjustment.

(5) *Notice of Adjustments.* The Regional Director shall give notice of in-season adjustments by issuance of field orders in accordance with the procedures in paragraph (a) of this section.

(c) *Optimum Yield.* No action which has the effect of raising the optimum yield for Tanner crab in any geographic area as specified in Table 1 of § 671.21(a) is authorized under this section.

(d) *Prohibition.* Any fishing for Tanner crab contrary to a field order issued under this section is prohibited.

PART 672—GROUNDFISH OF THE GULF OF ALASKA

Subpart A—General

Sec.

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AUTHORITY: 16 U.S.C. 1855.

SOURCE: 45 FR 73487, Nov. 5, 1981, unless otherwise noted.

Subpart A—General

§ 672.1 Purpose and scope.

(a) Regulations in this part govern fishing for groundfish by vessels of the United States within that portion of the Gulf of Alaska over which the United States exercises exclusive fishery management authority.

(b) For regulations governing fishing in the Gulf of Alaska groundfish fishery by fishing vessels other than vessels of the United States, see 50 CFR 611.91.

(c) These regulations implement the Gulf of Alaska groundfish fishery management plan developed by the North Pacific Fishery Management Council.

§ 672.2 Definitions.

In addition to the definitions in the Act, and unless the context requires otherwise, the terms used in this part shall have the following meanings (some definitions in the Act have been repeated here to aid understanding of the regulations):

Act means the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801-1882, as amended.

ADF&G means the Alaska Department of Fish and Game.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, or an individual to whom appropriate authority has been delegated.

Authorized officer means: (1) Any commissioned, warrant, or petty officer of the Coast Guard;

(2) Any certified enforcement or special agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research activity conducted by a scientific research vessel, which involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in subparagraphs (1), (2), or (3) above.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (1) fishing, or (2) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Groundfish means pollock, cod, any species of flounder and sole, Pacific ocean perch, thornyhead rockfish, other rockfish, sable fish, Atka mackerel, squid, and other finfish, except salmon, steelhead trout, and Pacific halibut. The scientific names of these species are as follows:

Pollock means *Theragra chalcogrammus.*

Cod means *Gadus macrocephalus.*

Arrowtooth flounder means *Atheresthes stomias.*

Other flounder means *Pleuronectiformes* (order) not specifically defined.

Rock sole means *Lepidopsetta bilineata.*

Flathead sole means *Hippoglossoides elassodon.*

Pacific ocean perch means *Sebastes alutus.*

Atka mackerel means *Pleurogrammus monopterygius.*

Sablefish means *Anoplopoma fimbria.*

Squid means *sepioid* and *teuthoid* squid.

Salmon means of the family *Salmonidae.*

Pacific halibut means *Hippoglossus styenolepis.*

Steelhead trout means *Salmo gairdneri.*

Rattail means *Coryphaenoides* not specifically defined.

Thornyhead rockfish, not specifically defined, means rockfish of the genus *Sebastolobus.*

Other rockfish means all fish of the genus *Sebastes* except Pacific ocean perch and *S. polyspinus, S. aleutianus, S. borealis,* and *S. zacentrus.*

Gulf of Alaska means that portion of the fishery conservation zone in the North Pacific Ocean exclusive of the Bering Sea, between 132°40′ W. longitude and 170°00′ W. longitude seaward of the State of Alaska.

Landing means off-loading fish.

Longline means a stationary, buoyed, and anchored line with hooks or pots attached, or the taking of fish by means of such a device.

Off-bottom trawl means a trawl in which the otter boards may be in contact with the seabed but the ground rope of the net remains above the seabed.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(1) Any person who owns that vessel in whole or in part;

(2) Any charterer of the vessel, whether bareboat, time, or voyage;

(3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows

control over the destination, function, or operation of the vessel; or

(4) Any agent designated as such by any person in subparagraph (1), (2), or (3).

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, or an individual to whom appropriate authority has been delegated.

Regulatory area means any of three areas of the FCZ of the Gulf of Alaska seaward of the State of Alaska. The three regulatory areas are described as follows:

Area and Location

Eastern, between 132°40′ and 147°00′ W. longitude. Central, between 147°00′ and 159°00′ W. longitude. Western, between 159°00′ and 170°00′ W. longitude.

Regulatory district means any of three districts of the Eastern regulatory area as follows: Southeast Outside district: All waters of the FCZ east of 137°00′ West longitude. Southeast Inside district: All waters of the territorial sea (within three miles) east of 137°00′ West longitude and north of 54°30′ North latitude. Yakutat district: All other portions of the Eastern regulatory area.

Vessel of the United States means: (1) A vessel documented or numbered by the Coast Guard under U.S. law; or

(2) A vessel, under 5 net tons, which is registered under the laws of any State.

§ 672.3 Relation to other laws.

(a) *Federal law.* For other regulations concerning the conservation of halibut see the regulations of the International Pacific Halibut Commission, or any regulations implementing any halibut fishery management plan approved under the Act. For other regulations concerning fishing for Tanner crab and salmon see 50 CFR Part 671 and 50 CFR 674 respectively.

(b) *State law.* Certain data collection and enforcement activities under this part will be performed by personnel of the State of Alaska under the terms of an agreement with NOAA/NMFS and the U.S. Coast Guard.

(c) *Delegation.* The Assistant Administrator has delegated to the Regional Director authority to take actions pursuant to § 672.22 of this part, and to apportion reserves pursuant to § 672.20(c) of this part.

§ 672.4 Permits.

(a) *General.* No vessel of the United States may fish for groundfish in the Gulf of Alaska without first obtaining a permit issued under this part. Permits shall be issued without charge.

(b) *Application.* An applicant may obtain a permit by submitting to the Regional Director a written request containing the following information:

(1) The applicant's name, mailing address, and telephone number;

(2) The name of the vessel;

(3) The vessel's U.S. Coast Guard documentation number or State registration number;

(4) The home port of the vessel;

(5) The type of fishing gear to be used; and

(6) The signature of the applicant.

(c) *Issuance.* (1) Upon receipt of a properly completed application, the Regional Director shall issue a permit.

(2) Upon receipt of an incomplete or improperly completed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 10 days following the date of notification, the application shall be considered abandoned.

(d) *Notification of change.* Any person who has applied for and received a permit under this section shall given written notification of any change in the information provided under paragraph (b) of this section to the Regional Director within 30 days of the date of that change.

(e) *Duration.* A permit shall continue in full force and effect for one year or, until it is revoked, suspended, or modified pursuant to 50 CFR Part 621 (Civil procedures).

(f) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit that has been intentionally altered, erased, or mutilated shall be invalid.

(g) *Transfer.* Permits issued under this part are not transferable or assignable. A permit shall be valid only for the vessel for which it is issued.

(h) *Inspection.* Any permit issued under this part must be carried abroad the vessel whenever the vessel is fishing for groundfish. The permit shall be presented for inspection upon request of any authorized officer.

(i) *Sanctions.* Subpart D of 50 CFR 621 (Civil procedures) shall govern the imposition of permit sactions against a permit issued under this part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the permitted vessel is used in the commission of an offense prohibited by the Act or these regulations; or if a civil penalty or criminal fine imposed under the Act and pertaining to a permitted vessel is not paid.

§ 672.5 Reporting requirements.

(a) *Fishing vessel reporting requirements*—(1) *Port of Landing in Alaska.* The operator of any fishing vessel regulated under this part whose port of landing is in the State of Alaska shall, for each sale or delivery on land of groundfish caught in any Gulf of Alaska regulatory area, be responsible for the submission to ADF&G of an accurately completed State of Alaska fish ticket.

(i) At the election of the vessel operator, the fish ticket required under this paragraph (a)(1) shall be either:

(A) Submitted by the vessel operator directly to the ADF&G within one week after such fish are sold or delivered; or (B) prepared, at the request of the operator, by the purchaser and submitted by the purchaser to ADF&G within one week after such fish are received by the purchaser. For the purposes of this paragraph (a), a "purchaser" is any person who receives on land, from a fishing vessel regulated under this part, groundfish caught in any Gulf of Alaska regulatory area.

(ii) In addition to the requirements of paragraph (a)(1) of this section, each operator (or purchaser, if the fish ticket is submitted in accordance with paragraph (a)(1)(i)(B) of this section) shall accurately state on each fish ticket:

(A) The quantity and types of gear used;

(B) The total time fished with each gear type; and

(C) The total number of hauls for each gear.

(2) *Port of Landing Outside Alaska.* The operator of any fishing vessel regulated under this part whose port of landing is outside the State of Alaska shall, for each sale or delivery of groundfish caught in any Gulf of Alaska regulatory area, submit a completed State of Alaska fish ticket, or an equivalent document containing all of the information required on an Alaska fish ticket, together with the additional information required by paragraph (a)(1)(ii) of the section, to the ADF&G within one week after the date of each such sale or delivery. The address to which these documents must be sent is: Director, Commercial Fish Division, Alaska Department of Fish and Game Headquarters, Subport Building, Juneau, Alaska 99801.

(b) *Processor and purchaser reporting requirements*—(1) Any U.S. fish processor or purchaser (i.e., any person who receives fish for a commerical purpose from a fishing vessel subject to this part), except: (i) Any fisherman purchasing fish for his own use as bait or (ii) any foreign fishing vessel permitted to receive U.S. harvested fish at sea, shall accurately complete each written survey authorized by this section and received by the processor or purchaser from the Regional Director.

(2) Surveys shall be conducted at those times considered necessary by the Regional Director, but at least twice, and no more than four times, during the fishing year.

(3) Each survey shall be designed to gather the following information:

(i) Changes in processing plant capacity;

(ii) Changes in the availability of groundfish by species;

(iii) Changes in market demand;

(iv) Changes in expected utilization of processing capacity or expected purchases of groundfish species for the subsequent 12-month period; and

(v) Changes in other factors which the purchaser or processor believes relevant to the accurate determination of the amounts of domestic annual processing (DAP) and domestic nonprocessed fish (DNP).

(4) Completed surveys shall be returned to the Regional Director at the address and by the date specified on the survey.

(c) *U.S. vessels delivering to foreign processing vessels.* (1) The owner or operator of any fishing vessel regulated by this section who has delivered, or intends to deliver, groundfish caught in any Gulf of Alaska regulatory area to a foreign fishing vessel at sea shall accurately complete each written survey authorized by this section and received by the owner or operator from the Regional Director.

(2) Surveys shall be conducted at those times considered necessary by the Regional Director, but at least twice, and no more than four times during the fishing year.

(3) Each survey shall be designed to gather the following information:

(i) Changes in the number and capacity of U.S. vessels which harvest groundfish to be delivered to foreign fishing vessels at sea;

(ii) Changes in regulatory areas of operation;

(iii) Changes in capacity or operations of the foreign fishing vessel to which deliveries are being, or will be, made;

(iv) Changes in quantities and species of groundfish expected to be delivered in the subsequent 12-month period;

(v) Changes in alternative fishery opportunities available to the U.S. vessels; and

(vi) Changes in other factors the owner or operator believes relevant to the accurate determination of the amount of joint venture processing (JVP).

(4) Completed surveys shall be returned to the Regional Director at the address and by the date specified on the survey.

§ 672.6 [Reserved]

§ 672.7 General prohibitions.

It shall be unlawful for any person to:

(a) Fish for groundfish with a vessel of the United States which does not have aboard a valid permit issued pursuant to this part;

(b) Possess, have custody or control of, ship, transport, import, export, offer for sale, sell, or purchase any fish taken or retained in violation of the Act, this part, or any other regulation or permit issued under the Act;

(c) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this part, or any other regulation or permit issued under the Act;

(d) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (c) of this section;

(e) Resist a lawful arrest for any act prohibited by this part;

(f) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part;

(g) Forcibly assault, resist, impede, intimidate, or interfere with an observer placed aboard a fishing vessel pursuant to this part;

(h) Violate any other provision of this part, the Act, or any regulation or permit issued under the Act.

§ 672.8 Enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to these regulations shall immediately comply with instructions issued by an authorized officer to facilitate safe boarding and inspection of the fishing vessel, its gear, equipment, and catch for purposes of enforcing the Act and this part.

(b) *Signals.* Upon being approached by a Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Act, the operator of a fishing vessel shall be alert for signals conveying enforcement instructions. The following signals extracted from the International Code of Signals are among those which may be used:

(1) "L" meaning "You should stop your vessel instantly,"

(2) "SQ3" meaning "You should stop or heave to; I am going to board you," and

(3) "AA AA AA etc." which is the call to an unknown station.

(c) *Boarding.* A vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the authorized officer and his party to come aboard;

(2) If requested, provide a safe ladder for the authorized officer and his party;

(3) When necessary to facilitate the boarding, provide a man rope, safety line, and illumination for any ladder; and

(4) Take such other actions as necessary to insure the safety of the authorized officer and his party and to facilitate the boarding.

§ 672.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, and 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 672.20 Optimum yield.

(a) The specifications of optimum yield (OY), reserves, estimates of domestic annual processing (DAP), joint venture processing (JVP), and total allowable level of foreign fishing (TALFF) for species regulated under this part are set forth in Table I. These specifications are effective from November 1, 1980 through December 31, 1981, unless amended. After December 31, 1981, the specifications shall continue on a calendar year basis at $^{12}/_{14}$ of the levels specified for the period November 1, 1980 to December 31, 1981, unless amended. When the combined catch by foreign and United States vessels reaches the OY amount for a species or species category, further fishing for all species shall be prohibited in the applicable regulatory area or district for the remainder of the fishing year, except that fishing for sablefish by fishing vessels of the United States using longline gear shall not be prohibited unless the OY for sablefish in that fishing area or district has been reached.

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TABLE 1.—OY—DAH—DAP—DNP—JVP—RESERVE AND TALFF BY REGULATORY AREA [1]

Species and species code	Areas	OY	DAH	DAP	JVP = DAH − (DAP + DNP)	DNP	Reserve	TALFF
Pollock, 701	Western	66,500	3,383	29	3,354		0	63,117
	Central	111,066	29,326	6,277	23,049		0	81,740
	Eastern	19,367	1,584	811	773		0	17,783
	Total	196,933	34,293	7,117	27,176		0	162,640
Pacific cod, 702	Western	19,320	1,593	480	413	700	0	17,727
	Central	39,130	7,058	4,060	1,598	1,400	0	32,072
	Eastern	11,550	1,715	127	188	1,400	0	9,835
	Total	70,000	10,366	4,667	2,199	3,500	0	59,634
Flounders, 129	Western	12,133	216	116	100		0	11,917
	Central	17,150	507	350	157		0	16,643
	Eastern	9,800	1,187	1,050	137		0	8,613
	Total	39,033	1,910	1,516	394		0	37,173
Pacific ocean perch,[2] 780	Western	3,150	102	29	73		0	3,048
	Central	9,217	365	144	221		0	8,852
	Eastern	16,800	1,534	93	1,441		3,360	11,906
	Total	29,167	2,001	266	1,735		3,360	23,806
Other rockfish,[3] 849	Total	8,867	500	367	133		0	8,367
Sablefish, 703	Western	2,450	115	17	98		0	2,335
	Central	4,433	423	367	56		0	4,010
	Yakutat District [4]	3,966	410	377	33		0	3,556
	Southeast—Outside [4]	3,500	3,395	3,290	105		0	105
	Total	14,349	4,343	4,051	292		0	10,006
Atka mackerel, 207	Western	5,458	38	0	38		0	5,420
	Central	24,309	60	0	60		0	24,249
	Eastern	3,717	17	0	17		0	3,700
	Total	33,484	115	0	115		0	33,369
Squid, 509	Total	5,833	25	0	25		0	5,808
Other species,[5] 499	Total	18,900	1,807	351	523	933	0	17,093
Thornyhead rockfish, 749	Total	4,375	7	7	0		0	4,368

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[1] See 672.2 for a description of Regulatory Areas and Districts.

[2] The category "Pacific ocean perch" includes Sebastes species S. alutus (Pacific ocean perch), S. polyspinus (northern rockfish), S. aleutianus (rougheye rockfish), S. borealis (shortraker rockfish), and S. zacentrus (sharpchin rockfish).

[3] The category "other rockfish" includes all fish of the genus Sebastes except the category "Pacific ocean perch" as defined above and "thorny rockfish," Sebastolobus.

[4] Excludes values for the Southeast Inside District, which is not governed by these regulations.

[5] The category "other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus.

(b) *Field orders.* (1) If the Regional Director determines that the OY for any species in any regulatory area or district in Table I of paragraph (a) will be reached, he shall issue a field order pursuant to § 672.22(a) prohibiting fishing for all species in that fishing area, except that the Regional Director shall not prohibit, under this section, fishing for sablefish by fishing vessels using longline gear unless he determines that the OY for sablefish in that fishing area will be reached.

(2) Fishing for species of groundfish by vessels of the United States in the applicable regulatory area contrary to any field order issued under this paragraph is prohibited from the effective date of such field order except that fishing for sablefish with longline gear is not prohibited until the effective date of a field order prohibiting longline fishing for sablefish in that fishing area.

(c) *Apportionment of Reserves and Initial DAH*—(1) *Apportionment of Reserves.* (i) As soon as practicable after the first day of the following months, and after consultation with the Council, the Regional Director may apportion to TALFF, in accordance with paragraph (c)(3) of this section, all or part of the following amounts of each reserve: April—40 percent; June—40 percent; August—20 percent.

(ii) As soon as practicable after the first day of the following months, and on such other dates as he determines necessary, the Regional Director may apportion to DAH, in accordance with paragraph (c)(3) of this section, any amounts of any reserve that he determines to be needed to supplement DAH: April, June, and August.

(2) *Apportionment of Initial DAH.* As soon as practicable after the first day of August, the Regional Director shall apportion to TALFF that part of the DAH which he determines will not be harvested by United States fishermen during the remainder of the fishing year.

(3) *Standards and Procedure for Apportionment*—(i) *General.* The Regional Director shall apportion to TALFF under paragraphs (c)(1) and (c)(2) of this section only those amounts which he determines will not be harvested by vessels of the United States during the remainder of the fishing year. The amount of reserve which the Regional Director determines will be harvested by vessels of the United States may, in the discretion of the Regional Director, either be apportioned to the estimate of domestic annual harvest (DAH), or retained in the reserve as eligible for later apportionment under pargraph (c) of this section.

(ii) *Factors.* In determining whether or not amounts proposed to be apportioned under paragraphs (c)(1) and (c)(2) of this section will be harvested by vessels of the United States during the remainder of the fishing year, the Regional Director shall consider the following factors, although he shall not be limited to these factors:

(A) Reported United States catch and effort by species and area compared to previously projected United States harvesting capacity;

(B) Projected United States catch and effort by species and area for the remainder of the fishing year;

(C) Amounts of fish, particularly United States harvested fish, already purchased or processed by United States fish processors during the fishing year, compared to previously projected processing capacity of United States fish processors;

(D) Projected processing capacity, and utilization of that capacity for the processing of United States harvested fish, by United States fish processors for the remainder of the fishing year;

(E) Amounts of United States harvested fish already received or processed by foreign fishing vessels, compared to previously projected levels of such receipt or processing; and

(F) The need to maintain orderly fisheries despite any misspecifications of by-catch species amounts in mixed species fisheries.

(iii) *Allocation of Increases and Decreases in DAH Among DAP, JVP, and DNP.* The Regional Director shall allocate any increases or decreases in DAH amounts resulting from apportionments under paragraphs (c)(1) and (c)(2) of this section among the three components of DAH: The estimates of domestic annual processing (DAP); joint venture processing (JVP); and domestic non-processed fish (DNP).

(iv) *Public comment.* (A) Comments may be submitted to the Regional Director concerning:

(*1*) Whether, and the extent to which, vessels of the United States will harvest reserve or DAH amounts during the remainder of the fishing year; and

(*2*) Whether, and the extent to which, United States harvested groundfish can or will be processed by United States fish processors or received at sea by foreign fishing vessels.

(*3*) Comments should be addressed to Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 99802, and must be received by the Regional Director no later than 15 days before the relevant date specified in paragraph (c)(1) or (c)(2) of this section. When the Regional Director determines that apportionment is required on dates other than those specified in paragraph (c)(1) of this section, he shall issue a FEDERAL REGISTER notice on the proposed apportionment which shall state the period during which comments may be submitted.

(B) The Regional Director shall consider any timely comments submitted in accordance with this paragraph in determining whether, and to what extent, vessels of the United States will harvest reserve or DAH amounts during the remainder of the fishing year, and whether any part of such amounts will be allocated to TALFF under paragraphs (c)(1) and (c)(2) of this section.

(C) The Regional Director shall compile, in aggregate form, the most recent available reports on (*1*) level of catch and effort by vessels of the United States fishing for groundfish in the Gulf of Alaska; and (*2*) amounts of United States harvested groundfish taken in the Gulf of Alaska and processed by United States fish processors or delivered at sea to foreign fishing vessels. These data shall be available for public inspection during business hours (8:00 a.m.-4:30 p.m., Monday-Friday) at the National Marine Fisheries Service Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802, during the last 25 days of each comment period.

(v) *Procedure.* As soon as practicable after each of the dates specified in, and each additional date selected under paragraph (c)(1) or (c)(2) of this section, the Regional Director shall publish in the FEDERAL REGISTER:

(A) Any reserve amounts to be apportioned to TALFF or DAH;

(B) Any DAH amounts to be apportioned to TALFF;

(C) The distribution of amounts apportioned to or from DAH among DAP, JVP, and DNP;

(D) The reasons for any apportionments and their distribution; and

(E) Responses to any comments received.

(d) *Prohibited species.* (1) Prohibited species, for the purpose of this part, means any species of fish caught while fishing for groundfish, the retention of which is prohibited by other applicable law, including regulations implementing any fishery management plan for that species.

(i) Any catch of halibut by fishing vessels regulated by this part is catch of a prohibited species, unless retention is authorized by the regulations of the International Pacific Halibut Commission.

(ii) Any catch of Tanner crab (*C. bairdi* or *C. opilio*) by fishing vessels regulated by this part is catch of a prohibited species as a result of regulations implementing the Fishery Management Plan for Tanner crab of Alaska (see 50 CFR 671).

(iii) Any catch of salmon by fishing vessels regulated by this part is catch of a prohibited species as a result of regulations implementing the Fishery Management Plan for High Seas Salmon off the Coast of Alaska, east of 175° 00′ East longitude (see 50 CFR 674).

(2) Each vessel shall sort its catch as soon as possible after retrieval of the catch and, after allowing for sampling by an observer (if any), shall return any catch of prohibited species or parts thereof to the sea immediately with a minimum of injury regardless of its condition.

(3) There shall be a rebuttable presumption that any prohibited species found onboard a fishing vessel regulat-

ed by this part was caught and retained in violation of this part.

(4) In any regulatory area where the OY in Table I of paragraph (a) for any species is "0" (zero), any catch of that species by a vessel regulated by this part in that fishing area shall be considered catch of a "prohibited species" and shall be treated in accordance with this paragraph.

(e) *Halibut.* (1) If, during the period between December 1 and May 31, the Regional Director determines that the estimated total catch of halibut in any regulatory area by vessels regulated by this part will reach the amount listed below, he shall issue a field order pursuant to § 672.22(a) prohibiting, until June 1, groundfish fishing with trawl gear in that regulatory area by vessels regulated by this part. Regulatory Area and Catch Amount.

Western—29 metric tons (m.t.)
Central—52 m.t.
Eastern—31 m.t.

(2) Fishing for groundfish with trawl gear by vessels regulated by this part in the applicable regulatory area is prohibited from the effective date of any field order issued pursuant to this paragraph, until June 1.

[45 FR 73487, Nov. 5, 1980, as amended at 46 FR 44988, Sept. 9, 1981]

EFFECTIVE DATE NOTE: Section 672.20 Table I is effective through December 31, 1981 (see 46 FR 44988, Sept. 9, 1981).

§ 672.21 [Reserved]

§ 672.22 Time and area closures.

(a) *Field orders.* (1) Field orders issued by the Regional Director under this part shall include the following information: (i) A description of the area to be opened or closed; (ii) the effective date and any termination date of such opening or closure; and (iii) the reason for the opening or closure.

(2) No field order issued under this paragraph shall be effective until:

(i) It is filed for publication in the FEDERAL REGISTER;

(ii) It has been posted and otherwise made available to the public, in accordance with procedures customarily used by the ADF&G for the posting and publicizing of similar notices of closure, for 48 hours prior to its effective date; and

(iii) It has been broadcast at those time intervals, channels and frequencies customarily used by the ADF&G to broadcast similar notices of closure, for 48 hours prior to its effective date.

(3) Field orders issued pursuant to this section shall remain in effect until the earlier of the following dates:

(i) Any expiration date stated in the field order; or

(ii) The effective date of any field order which modifies, rescinds, or supersedes the initial field order.

(b) *Inseason adjustments* (1) *General.* The Regional Director may, following consultation with the ADF&G, prohibit fishing by vessels regulated by this part, for any species of groundfish in any portion of the Gulf of Alaska during the fishing year.

(2) *Determinations.* Any adjustment under this paragraph shall be based on a determination by the Regional Director that: (i) The condition of any groundfish or halibut stock in any portion of the Gulf of Alaska is substantially different from the condition anticipated at the beginning of the fishing year, and (ii) such differences reasonably support the need for inseason conservation measures to protect groundfish or halibut stocks.

(3) *Data.* Fishery and observer data reported inseason which relates to one or more of the following factors may be considered in making this determination:

(i) The effect of overall fishing effort within a regulatory area;

(ii) Catch per unit of effort and rate of harvest;

(iii) Relative abundance of stocks within the area;

(iv) Amount of halibut being caught;

(v) Condition of stocks within the area; and

(vi) Any other factors relevant to the conservation and management of the groundfish or halibut resource.

(4) *Procedure.* (i) The Regional Director shall publish proposed adjustments in the FEDERAL REGISTER for public comment before they are made final, unless the Regional Director finds for good cause that such notice and public procedure is impracticable, unnecessary, or contrary to the public interest.

(ii) If the Regional Director decides, for good cause, that an adjustment is to be made without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, the adjustment shall be received by the Regional Director for a period of 15 days after the effective date of the field order. (Address: Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.)

(iii) During any such 15-day period, the Regional Director shall make available for public inspection, during business hours, the aggregate data upon which an adjustment was based. (Address: National Marine Fisheries Service, Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802.)

(iv) If comments are received during the 15-day period, the Regional Director shall reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration, shall either: (A) publish in the FEDERAL REGISTER a notice of continued effectiveness of the adjustment, responding to comments received; or (B) modify or rescind the adjustment.

(5) *Notice of adjustments.* The Regional Director shall give notice of inseason adjustments by issuance of a field order in accordance with the procedures in paragraph (a) of this section.

(6) *Optimum yield.* No action which has the effect of raising the optimum yield for any species as specified in Table I of § 672.20(a) is authorized under this paragraph.

(c) *Prohibition.* Any fishing contrary to a field order issued under this section is prohibited.

§ 672.23 [Reserved]

§ 672.24 Gear limitations.

Biodegradable escape panels required for all sablefish pots. Each sablefish pot used in fishing under these regulations shall have a biodegradable panel. This panel shall consist of an opening in the webbing of the pot which has been laced, sewn, or secured by untreated cotton twine or other natural fiber no larger than 120 thread which, upon deterioration, produces an opening in the web with a perimeter equal to the perimeter of the tunnel eye opening.

§§ 672.25—672.26 [Reserved]

§ 672.27 Observers.

All fishing vessels subject to this part must, when so requested by the Regional Director, take aboard an observer.

PART 674—HIGH SEAS SALMON FISHERY

Subpart A—General

Sec.

674.1 Purpose and scope.
674.2 Definitions.
674.3 Relation to other laws.
674.4 Permits.
674.5 Recordkeeping and reporting requirements.
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Subpart B—Management Measures

674.20 General.
674.21 Catch limitations.
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674.23 Time and area limitations.
674.24 Gear restrictions.

AUTHORITY: 16 U.S.C. 1855.

SOURCE: 44 FR 29081, May 18, 1979, unless otherwise noted.

Subpart A—General

§ 674.1 Purpose and scope.

(a) The purpose of this part is to implement the High Seas Salmon Fishery Management Plan developed by the North Pacific Fishery Management Council pursuant to the Fishery Conservation and Management Act of 1976, as amended (the Act).

(b) These regulations govern fishing for salmon by fishing vessels of the United States within that portion of the North Pacific Ocean seaward of Alaska, east of 175° East Longitude, over which the United States exercises exclusive fishery management authority under the Act.

§ 674.2 Definitions.

In addition to the definitions in the Act, and unless the context requires otherwise, the terms used in this part shall have the following meanings

(Some definitions in the Act are repeated here to aid understanding of the regulations):

ADF&G means the Alaska Department of Fish and Game.

Act means the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801-1882, as amended.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, or an individual to whom appropriate authority has been delegated.

Authorized Officer means: (1) Any commissioned, warrant, or petty officer of the United States Coast Guard;

(2) Any certified enforcement or special agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Commercial fishing means fishing for, or retention of, fish for sale or barter.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States (the "3-mile limit") to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means, any activity, other than scientific research, which involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described above.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(1) Fishing; or (2) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Hand troll gear means one or more lines with lures or hooks attached, drawn through the water behind a moving vessel, and retrieved by hand or hand-cranked reels or gurdies and not by any electrically, hydraulically, or mechanically powered device or attachment.

Management area means the two areas described below:

(1) *West Area* means the waters of the FCZ seaward of Alaska between 175° East Longitude and 143°53′36″ West Longitude (Cape Suckling);

(2) *East Area* means the waters of the FCZ seaward of Alaska east of 143°53′36″ West longitude.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(1) Any person who owns that vessel in whole or in part;

(2) Any charterer of the vessel, whether for bareboat, time, or voyage;

(3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(4) Any agent designated as such by any person in paragraph (1), (2), or (3) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Personal use fishing means fishing for, or retention of, fish for personal use and not for sale or barter.

Power troll gear means one or more lines, with hooks or lures attached, drawn through the water behind a moving vessel, and originating from a power gurdy or power-driven spool fastened to the vessel, the extension or retraction of which is directly to the gurdy or spool.

Regional Director means Director, Alaska Region, National Marine Fisheries Service (NMFS), P.O. Box 1668, Juneau, Alaska 99802, or an individual to whom appropriate authority has been delegated.

Salmon means the following species: Chinook (or king) salmon (*Oncorhynchus tshawytscha*); Coho (or silver) salmon (*O. kisutch*); Pink (or humpback) salmon (*O. gorbuscha*); Sockeye (or red) salmon (*O. nerka*); and Chum (or dog) salmon (*O. keta*).

Vessel of the United States means: (1) A vessel documented or numbered by the Coast Guard under United States Law; or

(2) A vessel, under five net tons, which is registered under the laws of any State.

§ 674.3 Relation to other laws.

(a) *Federal law.* For regulations concerning fishing for Tanner crab see 50 CFR Part 671; for regulations concerning fishing for groundfish in the Gulf of Alaska see 50 CFR Part 672; and for regulations concerning fishing for halibut see applicable regulations of the International Pacific Halibut Commission (IPHC). This Part 674 does not apply to fishing conducted under the North Pacific Fisheries Act, as amended (16 U.S.C. 1921 *et seq.*), and regulations thereunder.

(b) *State Law.* Certain responsibilities relating to the administration of these regulations will be performed by personnel of Alaska under the terms of an agreement with NOAA/NMFS and the United States Coast Guard.

(c) *Delegation.* The Assistant Administrator has delegated to the Regional Director authority to take actions pursuant to §§ 674.4 and 674.22.

§ 674.4 Permits.

(a) *General*—(1) *Power troll permits.* The only persons who may engage in commercial fishing for salmon in the management area using power troll gear are operators of fishing vessels who:

(i) On May 15, 1979, held a valid State of Alaska power troll permanent entry permit;

(ii) On May 15, 1979, held a valid State of Alaska power troll interim-use permit; or

(iii) Hold a valid permit issued by the Regional Director under paragraph (b) of this section.

(2) [Reserved]

(3) No permit is required of a crewmember or other person assisting in the operation of a commercial salmon troll vessel if the permit holder is on board and engaged in fishing.

(4) The right of access to the ocean salmon fishery provided herein constitutes a use privilege which may be modified or revoked without compensation.

(5) The permission to fish under this section expires at 11:59 p.m. (local time) on April 14, 1981.

(b) *Permits issued by the Regional Director*—(1) *Eligibility.* (i) Except as provided in paragraph (b)(1)(ii) of this section, any person is eligible for a permit described in paragraph (a)(1)(iii) of this section if that person, during any one of the calendar years 1975, 1976, or 1977:

(A) Operated a fishing vessel in the management area; (B) engaged in commercial fishing for salmon in the management area; (C) caught salmon in the management area using power troll gear, and (D) landed such salmon.

(ii) The following persons are not eligible: (A) Persons described in paragraph (a)(1)(i) or (ii) of this section; and (B) persons holding a permit under this paragraph (b).

(2) *Application.* (i) Each applicant for a permit under this paragraph shall submit a written application to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(ii) Each applicant shall provide the following information:

(A) The applicant's name, mailing address, and telephone number;

(B) The name of the fishing vessel;

(C) The fishing vessel's United States Coast Guard documentation number or State registration number;

(D) The home port of the fishing vessel;

(E) The length and registered tonnage of the fishing vessel;

(F) The color of the fishing vessel;

(G) The type of fishing gear used by the fishing vessel; and

(H) The signature of the applicant.

(iii) The information required by paragraphs (b)(2) (ii) (B)-(G) of this section shall be provided for each fishing vessel which the applicant intends to use for commercial fishing under this part. Any change in such information occurring after a permit is issued shall be reported to the Regional Director within 30 days of that change.

(iv) Each applicant shall submit State fish tickets or other equivalent documents showing the actual landing of salmon taken in the management area by the applicant with power troll gear during any one of the years 1975-1977.

(3) *Issuance.* (i) Upon receipt of a properly completed application the Regional Director promptly shall determine whether permit eligibility conditions have been met, and if so, shall issue a permit. If the permit is denied, the Regional Director shall notify the applicant in accordance with paragraph (e) of this section.

(ii) If an incomplete or improperly completed permit application is filed the Regional Director promptly shall notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of receipt of notification, the application shall be considered abandoned.

(4) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit that is altered, erased, or mutilated shall be invalid.

(5) *Replacement.* Replacement permits may be issued to replace lost or unintentionally mutilated permits. An application for a replacement permit shall not be considered a new application.

(c) *Transfers.* Except for emergency transfers authorized under paragraph (d) of this section, this paragraph (c) governs transfer of authorization under this part to engage in commercial fishing for salmon.

(1) *Alaska Permanent Entry Permits.* (i) The authorization under paragraph (a)(1)(i) of this section transfers with the transfer of the Alaska power troll permanent entry permit. At the time the State permit is transferred, the authority of the transferor under paragraph (a)(1)(i) of this section, expires.

(ii) Any person to whom transfer of a State of Alaska power troll permanent entry permit is denied by the State may apply to the Regional Director for approval of a transfer for purposes of paragraph (a)(1)(i) of this section. The Regional Director shall approve such transfer if he determines that such person had the ability to participate actively in the fishery at the time the transfer application was filed with the State.

(A) A request for transfer under this paragraph (c)(1)(ii) shall be filed with the Regional Director within 30 days of the State's denial of the transfer, and shall include (*1*) all documents and other evidence submitted to the State in support of the transfer and (*2*) a copy of the State's decision denying the transfer.

The Regional Director may request additional information from the individual requesting transfer or from the State to aid in his consideration of the request.

(B) If the transfer is denied, the Regional Director shall notify the applicant in accordance with paragraph (e) of this section.

(C) The authorization to engage in commercial fishing for salmon that is granted under this paragraph (c)(1)(ii) is not transferable, except that such authorization may be transferred to the person who holds the Alaska power troll permanent entry permit from which such authorization was originally derived.

(D) If the authorization to engage in commercial fishing in the management area is transferred under this paragraph (c)(1)(ii) the person who holds the Alaska power troll permanent entry permit from which such authorization originally derived may not engage in commercial fishing for salmon in the management area under paragraph (a)(1)(i) of this section, unless such authorization is trasferred to that person under paragraph (c)(1)(ii)(C) of this section and the Regional Director is so notified in writing.

(2) *Other Permits.* Authorization to engage in commercial fishing for salmon under paragraph (a) (1) (ii) or (iii) of this section is not transferable, except for emergency transfers under paragraph (d) of this section.

(d) *Emergency Transfer.* (1) The authorization to engage in the commercial salmon fishery under paragraph (a) of this section may be transferred on a temporary basis but not beyond the remainder of the calendar year, when sickness, injury, or other unavoidable hardship prevents the permittee from such fishing.

(2) Prior to any such emergency transfer, the permittee, or another person if the permittee is unable due to sickness or injury, shall submit to the Regional Director written request for an emergency transfer. Such request shall state the reasons why the permittee is prevented from fishing.

(3) Upon receipt of a request, the Regional Director promptly shall determine whether or not to authorize the emergency transfer, and shall notify the applicant in accordance with paragraph (e) of this section. The Regional Director may request additional information to aid in his determination. Such transfer shall not take effect until written authorization from the Regional Director is received.

(4) Paragraphs (d) (2) and (3) of this section apply to a holder of an Alaska power troll permit only if the State has denied an emergency transfer of that State permit. If the State has authorized an emergency transfer of a State permit, the transferee must notify the Regional Director in writing before the emergency transfer is effective for purposes of paragraph (a)(1) of this section. Such notification may be accomplished by mailing to the Regional Director a copy of the Alaska emergency tranfer request form."

(e) *Appeals and Hearings.* (1) A decision by the Regional Director to:

(i) Deny a permit under paragraph (b)(3)(i) of this section; or

(ii) Deny a transfer under paragraph (c) or (d) of this section, shall be in writing, shall state the facts and reasons therefore, and shall advise the applicant of the rights provided in this paragraph (e).

(2) Any decision of the Regional Director shall be final 30 days from receipt by the applicant, unless an appeal is filed with the Assistant Administrator within that time. Failure to file a timely appeal shall constitute waiver of the appeal. (Address: Assistant Administrator for Fisheries, National Marine Fisheries Service, Room 400, Page 2 Building, 3300 Whitehaven Street, N.W., Washington, D.C. 20235).

(3) Appeals under this paragraph shall be in writing and set forth the reasons why the appellant believes the Regional Director's decision was in error, and shall include any supporting facts or documentation.

(4) The appellant may, at the time the appeal is filed with the Assistant Administrator, request a hearing with respect to any disputed issue of material fact. Failure to request a hearing at this time shall constitute a waiver of the hearing. If a request for a hearing is filed, the Assistant Administrator may order a hearing if he determines that a hearing is necessary to resolve material issues of fact and shall so notify the appellant.

(5) If the Assistant Administrator orders a hearing he shall appoint a hearing examiner to conduct an informal fact finding inquiry into the matter. The hearing examiner, following the hearing, promptly shall furnish the Assistant Administrator with a report and recommendations.

(6) As soon as practicable after considering the matters raised in the appeal, and any report or recommendation of the hearing examiner in the event a hearing is held under this section, the Assistant Administrator shall notify the appellant in writing of his final decision. The notice shall summarize the findings of the Assistant Administrator and set forth the basis of the decision. The decision of the Assistant Administrator shall be final.

(f) *Display.* Any permit described in paragraph (a) of this section shall be on board the vessel at all times while the vessel is in the FCZ, and shall be displayed for inspection upon request of any Authorized Officer.

(g) For purposes of this § 674.4, the definition of "person" excludes corporations, partnerships, associations or other nonhuman entities.

[44 FR 29081, May 18, 1979, as amended at 44 FR 51990, Sept. 6, 1979; 45 FR 59173, Sept. 8, 1980]

§ 674.5 Recordkeeping and reporting requirements.

(a) *Salmon landed inside Alaska.* (1) The operator of any fishing vessel subject to this part who lands salmon in Alaska, for each sale or delivery of salmon caught by such vessel, shall submit an accurately completed Alaska fish ticket.

(2) At the election of the vessel operator, the fish ticket shall be either: (i) Submitted by the vessel operator directly to the ADF&G within one week after such fish are sold or delivered; or (ii) prepared, at the request of the operator, by the purchaser (i.e., any person who receives fish for a commercial purpose from a fishing vessel subject to this part) and submitted by the purchaser to the ADF&G within one week after such fish are received by the purchaser. The fish ticket shall be submitted to the local ADF&G representative.

(b) *Salmon landed outside Alaska.* (1) The operator of any fishing vessel subject to this part whose port of landing is in the United States but outside Alaska, or who sells, transfers or delivers salmon in the FCZ, shall submit a completed Alaska fish ticket, or an equivalent document containing all of the information required on an Alaska fish ticket, to the ADF&G within one week after the date of each sale or delivery of any species of fish covered by these regulations. (ADF&G address: Director, Commercial Fish Division, Alaska Department of Fish and Game Headquarters, Subport Building, Juneau, Alaska 99801).

(2) An operator who, in an application for a permit under § 674.4(b)(2) or by subsequent notice, indicated that more than one vessel might be used for fishing shall state on the document submitted under paragraph (b)(1) of this section which vessel was used.

§ 674.6 [Reserved]

§ 674.7 Prohibitions.

It is unlawful for any person:

(a) To fish for, take, or retain any salmon in violation of the Act or these regulations, including but not limited to the following:

(1) During closed seasons or in closed areas specified in Subpart B of this part;

(2) By means of gear or methods prohibited by Subpart B of this part;

(3) If such salmon are less than the minimum length specified in Subpart B of this part; or

(4) In numbers exceeding the daily limit for personal use fishing as specified in Subpart B of this part.

(b) To engage in commercial fishing for salmon with power troll gear without a valid permit as set forth in § 674.4(a).

(c) To possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any salmon taken in violation of the Act, this part, or any other regulations issued under the Act.

(d) To refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this part, or any other regulations issued under the Act.

(e) Forcibly to assault, resist, oppose, impede, intimidate, or interfere with any Authorized Officer in the conduct of any search or inspection described in paragraph (d) of this section.

(f) To resist a lawful arrest for any act prohibited by this part.

(g) To interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part.

(h) To transfer directly or indirectly, or attempt to so transfer, any salmon harvested by a vessel of the United States to any foreign fishing vessel, while such foreign vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Act which authorizes receipt bv that foreign fishing vessel of salmon harvested by a vessel of the United States.

(i) To violate any other provision of the Act, this part, or any regulation issued under the Act.

§ 674.8 Enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to this part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, logs, documents, and catch for purposes of enforcing the Act and this part.

(b) *Boarding.* A vessel signalled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the Authorized Officer and his party to come aboard;

(2) When necessary to facilitate boarding, provide sufficient illumination; and

(3) Take such other actions as necessary to ensure the safety of the Authorized Officer and his party, and to facilitate the boarding.

§ 674.9 Penalties.

(a) *General.* Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, and 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), and other applicable law.

(b) *Permit sanctions.* Subpart D of 50 CFR Part 621 (Civil Procedures) does not apply to permits issued under this part.

Subpart B—Management Measures

§ 674.20 General.

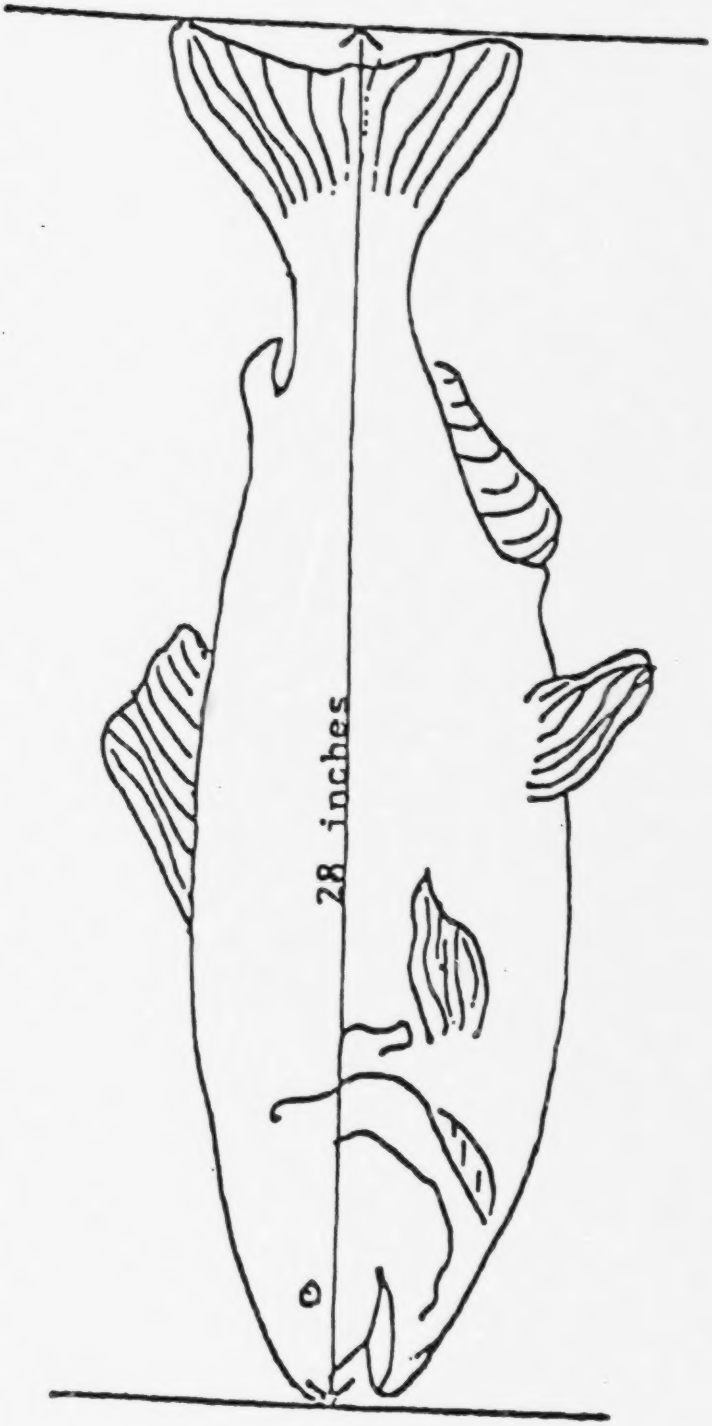
The management measures set out in this Part are effective until amended, modified or rescinded. This Part 674 does not apply to fishing conducted under the North Pacific Fisheries Act, as amended (16 U.S.C. 1021 *et seq.*), and regulations issued thereunder at 50 CFR Part 210.

§ 674.21 Catch limitations.

(a) *Size restrictions*—(1) *Minimum size limit*—(i) *Chinook Salmon.* Only chinook salmon 28 inches or more in length may be retained.

(ii) *Other salmon.* There is no minimum size limit for sockeye, coho, pink or chum salmon.

(2) *Method of measurement.* For purposes of paragraph (a)(1)(i) of this section, a chinook salmon is measured in a straight line passing over the pectoral fin, from the tip of the snout to the tip of the tail in its natural open position (see figure 1).


28 inches

(3) *Mutilation.* No person on a fishing vessel in the management area shall mutilate or otherwise disfigure a salmon for which a minimum size is set by these regulations, in a manner which prevents determining that salmon's length.

(b) *Personal use daily limit.* No person may catch in the management area and retain more than six (6) salmon for personal use per day, or possess while in the management area more than twelve (12) salmon. No more than three of the salmon retained or possessed may be chinook.

(c) *Landing requirements.* All chinook or coho salmon taken in the management area must be landed with heads on.

(d) *Possession prohibited.* The possession or retention of species of salmon in the management area or portion thereof which has been closed to the taking of such species of salmon, by vessels engaged in commercial fishing, is prohibited.

[44 FR 29081, May 18, 1979, as amended at 45 FR 59173, Sept. 8, 1980]

§ 674.22 Time and area closures.

(a) *In-season adjustments.* (1) The Regional Director may, following consultation with the ADF&G, adjust season opening or closing dates for any species regulated by this part, in any portion of the management area during the fishing year, by issuing a field order in accordance with the procedures in § 674.23(b).

(2) Any such adjustment shall be based upon a determination by the Regional Director that: (i) The condition of any salmon stock in any portion of a management area is substantially different from the condition anticipated at the beginning of the fishing year, and (ii) such differences reasonably support the need for in-season conservation measures to protect salmon stocks.

(3) One or more of the following factors may be considered in making this determination:

(i) The effect of overall fishing effort within a management area;

(ii) Catch-per-unit-of-effort and rate of harvest;

(iii) Relative abundance of stocks within the area;

(iv) Condition of stocks within the area; and

(v) Any other factors relevant to the conservation of the salmon resource.

(b) *Field orders*—(1) *Contents.* Field Orders issued by the Regional Director under this part shall include the following information:

(i) It is filed for publication with the FEDERAL REGISTER;

(ii) A description of the area subject to the field order; and

(iii) The effective date of such field order.

(2) *Public notice.* No field order issued under this section shall be effective until:

(i) It is published in the FEDERAL REGISTER;

(ii) It has been posted for 48 hours, and otherwise made available to the public, in accordance with procedures customarily used by the ADF&G for posting and publicizing similar notices of opening or closure; and

(iii) It has been broadcast for 48 hours at those time intervals, channels and frequencies customarily used by the ADF&G to broadcast similar notices of opening or closure.

(3) *Public comment.* (i) If the Regional Director decides, for good cause, that a field order should be issued without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, the order will be received and considered by the Regional Director for a period of 60 days after the effective date of the field order. (Address: Director, Alaska Region, National Marine Fisheries Service, Box 1668, Juneau, Alaska 99802).

(ii) During any such 60-day period, the Regional Director shall make available for public inspection, during business hours, the aggregate data upon which the field order was based. (Address: National Marine Fisheries Service, Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802).

(iii) As soon as practicable after the expiration of the 60-day period, the Regional Director shall reconsider the necessity for the field order and shall either: (A) Publish in the FEDERAL REGISTER a notice of continued effectiveness of the field order, responding to comments received; or (B) modify or rescind the field order in accordance with the procedures of this section.

(4) *Effective period.* A field order issued pursuant to this paragraph shall remain in effect until (i) any expiration date stated in a field order or a notice published by the Regional Director pursuant to this section; (ii) April 14, 1980, whichever is earlier.

[44 FR 29081, May 18, 1979, as amended at 45 FR 59173, Sept. 8, 1980]

§ 674.23 Time and area limitations.

(a) *Commercial fishing*—(1) *West Area.* Commercial fishing for salmon in the West Area is not permitted.

(2) East Area. Commercial fishing for chinook, chum, sockeye, and pink salmon in the East Area is permitted from April 15 to 12:00 midnight Pacific Daylight Time (PDT) July 14, and from 12:00 midnight (PDT) July 24 to 12:01 a.m., September 21 only.

(b) *Personal use fishing.* Personal use fishing for salmon in the management area is permitted the entire year.

(c) *Season dates.* All season dates in this section are inclusive. Time periods begin at 12:01 a.m. and end at 11:59 p.m. on the dates specified, based on local time.

[44 FR 29081, May 18, 1979, as amended at 44 FR 46287, Aug. 7, 1979; 45 FR 63287, Sept. 24, 1980]

§ 674.24 Gear restrictions.

(a) *Commercial fishing*—(1) *West Area.* Commercial fishing for salmon in the West Area is not permitted.

(2) *East Area.* Commercial fishing for salmon in the East Area is permitted only with power or hand-troll gear.

(i) [Reserved]

(ii) Vessels engaged in commercial fishing for salmon may not fish more than four lines south of a line beginning at the intersection of the inner boundary of the FCZ and the latitude of Cape Spencer at 58°12′08″ N. lat., thence west along said latitude to 138°00′ W. long., thence south along said longitude to 58°00′ N. lat., thence west along said latitude to the intersection of the outer boundary of the FCZ and 58°00′ N. lat. North of the line described above, such vessels may not fish more than six lines. All vessels engaged in commercial fishing for salmon must not have more than six gurdies mounted and in operational condition.

(b) *Personal use fishing.* Personal use fishing for salmon in the management area is permitted only with a single line held in the hand or attached to a hand-held or closely attended rod, which line may not have more than one artificial lure or two single hooks attached.

[44 FR 29081, May 18, 1979, as amended at 45 FR 59173, Sept. 8, 1980]

PART 680—INTERNATIONAL AGREEMENTS

Sec.
680.1 Purpose.
680.2 Definitions.
680.3 General.
680.4 Atlantic areas and species.
680.5 Reports and records.
680.6 [Reserved]
680.7 Pacific areas and species.
680.8 Reports and records.

AUTHORITY: Fishery Conservation Zone Transition Act, Pub. L. 95-6.

SOURCE: 42 FR 42216, Aug. 22, 1977, unless otherwise noted.

§ 680.1 Purpose.

The purpose of these regulations is to implement Pub. L. 95-73, an amendment to the Fishery Conservation Zone Transition Act, Pub. L. 95-6, which provides for the collection of catch and effort statistics of U.S. fishermen fishing in Canadian waters in the Atlantic and Pacific Ocean under Article XIII of the Reciprocal Fisheries Agreement between the United States and Canada signed on February 24, 1977.

§ 680.2 Definitions.

(a) *Agreement* means the Reciprocal Fisheries Agreement between the United States of America and the Government of Canada, signed February 24, 1977, that entered into force on July 26, 1977.

(b) *Authorized official means:* (1) Any commissioned, warrant or petty officer of the Coast Guard;

(2) Any agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any State agency which has entered into an agreement with the Secretary of Commerce to carry out the provisions of these regulations; and

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (b)(1) of this section.

(c) *By-catch* means the fish of any species other than the directed fishery species that are caught during a directed fishery.

(d) *Directed fishery* means a fishery conducted for the purpose of catching one or more designated species.

(e) *Persons* means any individual, partnership, corporation, or association subject to the jurisdiction of the United States.

(f) *Regulatory area.* The term "Regulatory Area" means and includes the whole of those portions of the convention of the International Convention for the Northwest Atlantic Fisheries (ICNAF) area which are separately described as follows:

(1) *Subarea 1.* The term "Subarea 1" means that portion of the Convention area, including all waters, except territorial waters, which lies to the north and east of a rhumb line from a point in 75°00′ north latitude and 73°30′ west longitude to a point in 69°00′ north latitude and 50°00′ west longitude; east of 59°00′ west longitude; and to the north and east of a rhumb line from a point in 61°00′ north latitude and 59°00′ west longitude to a point in 52°15′ north lattitude and 42°00′ west longitude.

(2) *Subarea 2.* The term "Subarea 2" means that portion of the Convention area, including all waters except territorial waters, lying to the south and west of Subarea 1, as defined in paragraph (f)(1) of this section, and to the north of the parallel of 52°15′ north latitude.

(3) *Subarea 3.* The term "Subarea 3" means that portion of the Convention area, including all waters except territorial waters, lying south of the parallel of 52°15′ north latitude; and to the east of a line extending due north from Cape Bauld on the north coast of Newfoundland to 52°15′ north latitude; to the north of the parallel of 39°00′ north latitude; and to the east and north of a rhumb line extending in a northwesterly direction which passes through a point in 42°30′ north latitude, 55°00′ west longitude in the direction of a point in 47°50′ north latitude 60°00′ west longitude, until it intersects a straight line connecting Cape Ray, on the coast of Newfoundland, with Cape North on Cape Breton Island; thence in a northeasterly direction along said line to Cape Ray.

(4) *Subarea 4.* The term "Subarea 4" means that portion of the Convention area, including all waters except territorial waters, lying to the west of Subarea 3 as described in paragraph (f)(3) of this section, and to the east of a line described as follows: Beginning at the terminus of the international boundary between the United States of America and Canada in Grand Manan Channel, at point 44°46′35.34″ north latitude, 66°54′11.23″ west longitude; thence due south to the parallel of 43°50′ north latitude; thence due west to the meridian of 67°40′ west longitude; thence due south to the parallel of 42°40′ north latitude; thence due east to a point in 66°00′ west longitude; thence along a rhumb line in a southeasterly direction to a point in 42°00′ north latitude, 65°40′ west longitude; thence due south to the parallel to 39°00′ north latitude.

§ 680.3 General.

(a) Any violation of these regulations by any person shall be deemed to be an act prohibited by section 307 of the Fishery Conservation and Management Act of 1976 and such person shall be liable to the United States for a civil penalty as provided for in section 308 of the Act.

(b) Information submitted pursuant to these regulations shall be disclosed consistent with Part 603 of Title 50.

§ 680.4 Atlantic areas and species.

(a) All U.S. fisheries for species and stocks found off Canada in Subareas 2, 3, and 4 of the Regulatory Area and regulated in accordance with the Agreement are subject to the reporting requirements in § 680.5.

(b) The species and subarea include:

Species	Subarea
Cod	4VSW.
Do	4X[1].
Haddock	4VW
Do	4X.
Silver Hake	4VWX.
Redfish	2+3K.
Do	4VWX.
Pollock	4VWX.
Flounders	4VWX.
Herring	4XW.

[1] Offshore.

In addition, any by-catch of species not listed above taken while fishing for the above species in accordance with the Agreement is subjected to the reporting requirements set forth below.

§ 680.5 Reports and records.

(a) *Owner or master.* In case of a U.S. vessel fishing for any of the species regulated under the Agreement, the owner or master of such vessel must maintain in an official logbook an accurate log of fishing operations showing date, type, and size of gear used, area fished, duration of fishing time or tow, and the estimated weight in pounds of each species taken at 12-hour intervals. The official logbook may be obtained upon request from the:

Regional Director, National Marine Fisheries Service, NOAA, 14 Elm Street, Gloucester, Massachusetts 01930.

(b) The logbook must be presented for examination and subsequent return to the owner or master of the vessel upon proper demand by any authorized official at any time during or at the completion of a fishing trip. Such required documentation must be maintained by the owner or master of the vessel for 1 year subsequent to the date of the last entry in the logbook and made availale to any authorized official upon demand.

(c) *Dealers.* All persons, individuals, firms or corporations, at any port or place within the United States, that buy from U.S. flag vessels or from a carrier licensed as a common carrier engaged in either interstate or intrastate commerce, any species taken by any U.S. fishing vessel and regulated in accordance with the Agreement must furnish to the Regional Director at the address in paragraph (a) of this section, within 72 hours of sale or within 72 hours after buying or receiving, or upon the vessels's return to any port of the United States, a complete and accurate record of each purchase on forms supplied by the National Marine Fisheries Service at the address indicated in paragraph (a) of this section.

(d) All persons purchasing or receiving any regulated species caught by U.S. vessels under the Agreement for transport to any port of the United States must maintain records identical to those required under paragraph (a) of this section.

§ 680.6 [Reserved]

§ 680.7 Pacific areas and species.

(a) All U.S. fisheries for species and stocks found off Canada in Pacific Marine Fisheries Commission Groundfish Statistical Areas 3C, 3D, 5A, and 5B, regulated in accordance with the Agreement, are subject to the reporting requirements in § 680.8.

(b) The species and areas include:

Species	Area
Blackcod	3C, 3D, 5A, 5B.
Pacific Ocean perch	3C, 3D, 5A, 5B.
Rockfishes other than Pacific Ocean perch.	3C, 3D, 5A, 5B.
Other groundfish	3C, 3D, 5A, 5B.
Shrimp	3C.

§ 680.8 Reports and records.

(a) *Owner or master.* In case of a U.S. vessel fishing for any of the species regulated under the Agreement, the owner or master of such vessel must maintain in an official logbook an accurate log of fishing operations showing date, type, and size of gear used, area fished, effort in hours trawled, or number of longline units and duration of soaking time, and the estimated weight in pounds of each species taken from these areas by each gear type. The official logbook may be obtained from the NMFS or the State agency which has entered into an agreement with the Secretary of Commerce to carry out the provision of these regulations.

(b) The logbooks must be presented for examination and subsequent return to the owner or master of the vessel upon proper demand by any authorized official at any time during or at the completion of a fishing trip. Such required documentation must be maintained by the owner or master of the vessel for 1 year subsequent to the date of the last entry in the logbook and made available to any authorized official upon demand.

(c) *Dealers.* All persons, individual, firms or corporations, at any port or place within the United States, that buy from U.S. flag vessels or from a carrier licensed as a common carrier engaged in either interstate or intrastate commerce, any species taken by any U.S. fishing vessel and regulated in accordance with the Agreement must furnish to an authorized official within 72 hours a complete and accurate record of each purchase, on forms supplied by the National Marine Fisheries Service or furnished by a State agency which has entered into an agreement with the Secretary of Commerce to carry out the provisions of these regulations.

(d) All persons purchasing or receiving any regulated species caught by U.S. vessels under the Agreement for transport to any port of the United States must maintain records identical to those required under paragraph (a) of this section.

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